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SEPARATION OF CHURCH AND STATE IN RESTATEMENT OF INTER-CHURCH- AND-STATE COMMON LAW

THIS article deals with the jurisdiction of a state to enact a law authorizing local school districts to reimburse parents from tax-raised funds for money expended to transport students to and from Catholic parochial schools on public transportation systems.

The question as to whether or not such a law contravened the First and Fourteenth Amendments of the Federal Constitution was raised for the first time in the United States Supreme Court by the case of *Everson, Appellant, v. Board of Education of the Township of Ewing, et al.*, decided by the Supreme Court on February 10, 1947, and reported in 15 *Law Week*, 4224.

The facts of the case as set forth in the opinion of the Court are as follows:

"A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation of children to and from schools.¹ The appellee, a township board of education, acting pursuant to this statute authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular busses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community

¹ New Jersey Laws 1941, c. 191, p. 581; N. J. Rev. Stat., 18:14-8.

to Catholic parochial schools. These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

"The appellant, in his capacity as a district taxpayer, filed suit in a State Court challenging the right of the Board to reimburse parents of parochial school students. He contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions. That Court held that the legislature was without power to authorize such payment under the State constitution. 132 N.J.L. 98. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor the resolution passed pursuant to it was in conflict with the State constitution or the provisions of the Federal Constitution in issue. 133 N.J.L. 350. The case is here on appeal under 28 U.S.C. § 344 (a)." ²

Everson contended in the United States Supreme Court that the state statute and the resolution, in so far as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in two respects:

First. They authorize the state to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes, thereby violating the due process clause of the Fourteenth Amendment.³

Second. The statute and the resolution forced inhabitants to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach the Catholic Faith, thereby using a state power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the States.

Everson particularly challenged the New Jersey statute as a "law respecting the establishment of religion".

² *Everson, Appellant, v. Board of Education of the Township of Ewing et al.*, 15 *Law Week*, 4224.

³ In this article this contention will not be further discussed.

The question which the United States Supreme Court was called upon to decide was: Did the New Jersey Court of Errors and Appeals err in reversing, and holding that neither the statute nor the resolution passed pursuant to it was in conflict with the provisions of the Federal Constitution in issue?

The United States Supreme Court, in a five to four decision, affirmed the decision of the New Jersey Court of Errors and Appeals.

Justice Black wrote the majority opinion in which Chief Justice Vinson and Justices Murphy, Reed and Douglas concurred.

Justice Jackson wrote a dissenting opinion in which Justice Frankfurter concurred.

Justice Rutledge also wrote a dissenting opinion in which Justices Jackson, Frankfurter and Burton concurred.

All nine justices were in agreement as to the principle of law involved, namely: A state can not enact a law imposing *a tax for the support of any religious activity or institution.*

All nine justices were in agreement that this principle of law flowed from the "establishment of religion" clause of the First Amendment.

After coming to agreement on the principle of law involved, all the justices were in agreement as to this issue of the case, *a question of fact:*

Did the New Jersey Act impose a tax for the support of any religious activity or institution?

The majority decided that it did not. The minority insisted that it did.

It is agreed that the nine justices were right in their declaration of the principle of law that a state can not enact a law imposing a tax for the support of any religious activity or institution.

It is submitted that the decision of the United States Supreme Court was correct and that the majority opinion was sound in finding as a fact that the transportation of school children *to the doors of a parochial school* was not a religious

activity. Generally speaking, it is clear that a transportation up to a state line is *intra*-state commerce, though a transportation across the state line may be *inter*-state commerce, something different in kind. So it is conceded that if the activity, for the support of which the tax was assessed, were one that took place *within* the parochial school premises, as part of the transportation, or otherwise, it might or might not be a religious activity, depending on its nature. Admittedly, a religious *motive* impelled the students to attend the parochial schools, but the physical act of transportation certainly had no spiritual qualities.

It is also submitted that all the justices were in error in reasoning that the source of the principle of law involved was the "establishment of religion" clause of the First Amendment.

"Establishment of religion" has no technical connotation in the common law. Its meaning was very well known in colonial days. It has the same meaning today. Webster's New International Dictionary⁴ defines it as follows: "By the *establishment* of religion is meant the erection and recognition of a state Church, or the concession of special favors, titles, and advantages to one church which are denied others . . .". (Italics inserted.)

This definition of establishment of religion is exactly the same as that given by that great constitutional lawyer, Thomas M. Cooley, in his treatise, *Constitutional Limitations*, wherein he states: "Those things which are not lawful under any of the American constitutions may be stated thus: 1. Any law respecting an establishment of religion. The legislatures have not been left at liberty to effect a union of Church and State, or to establish preferences by law in favor of any one religious persuasion or mode of worship . . .".⁵

It was the establishment of the Episcopal religion in Virginia in 1776 by that state that brought forth the historically famous protests from Presbyterian clergymen and others. A

⁴ Merriam Series, 1933.

⁵ II (8. ed., 1927), 966, 967.

series of petitions of the Presbytery of Hanover to the General Assembly of Virginia, especially, had an extensive influence in our subsequent constitutional history. In a document, styled "Dissenters' Pet'n 1776, Oct. 24,"⁶ they set forth, among other things:

"It is well known that in the frontier counties—which are justly supposed to contain a fifth part of the inhabitants of Virginia—the dissenter has borne the heavy burdens of purchasing glebes, building churches, and supporting the established clergy, where there were very few Episcopalians, either to assist in bearing the expense or to reap the advantage; and that throughout the other parts of the country there are so many thousands of zealous friends and defenders of our State who, besides the invidious and disadvantageous restrictions to which they have been subjected, annually pay large taxes to support an establishment from which their consciences and their principles oblige them to dissent,—all which are confessedly violations of their natural rights, and in their consequences a restraint upon freedom of enquiry and private judgment. . . ."

"Therefore we ask no ecclesiastical establishment for ourselves, neither can we approve of them when granted to others . . . we . . . entreat that all laws now in force in this Commonwealth which countenance religious domination may be speedily repealed, . . ."

A subsequent petition by the Presbytery of Hanover stated:

"... the Episcopal church was virtually regarded as the constitutional church, the church of the state, at the revolution; and was left by the framers of our present government, in that station of unjust pre-eminence which she had formerly acquired under the smiles of royal favour. . . ."

"... The Episcopal church is incorporated . . . so that it can receive . . . property for ecclesiastical purposes, without trouble or risk in securing it, while other Christian communities are

⁶ *Dissenter*, n. One who dissents; one who refuses conformity to an established church, as the Church of England; . . . The Funk and Wagnall's Standard Dictionary. Cf. 18 C.J. 1286; Bouvier *L. D.* (cit. 2 Burn. *Ecccl. L.*, p. 165.)

obliged to trust to the precarious fidelity of trustees chosen for the purpose. The Episcopal clergy are considered as having a right, *ex-officio*, to celebrate marriages throughout the State, while unnecessary hardships and restrictions are imposed upon other clergymen in the law relating to that subject passed in 1780. . . .

" . . . Such preferences, distinctions, and advantages, granted by the legislature exclusively to one sect of Christians, are regarded by a great number of your constituents as glaringly unjust and dangerous. . . ."

The struggle for religious liberty in Virginia was to go on for a period of years before Jefferson, Madison, and others, were able to bring it to a happy solution. In May, 1784 Patrick Henry introduced a resolution in the General Assembly of Virginia, favoring a general tax for the support of religion, in particular "for the teachers of the Christian religion". Madison strenuously opposed Henry's proposed bill and in July, 1785 issued a document, which he styled, "A Memorial and Remonstrance", to the General Assembly of Virginia. This document was the substantial cause of the defeat of Henry's bill. In its place a bill authored by Jefferson, entitled: "Act for Establishing Religious Freedom" was passed by the Assembly.

Madison and Jefferson were especially learned in Inter-Church-And-State Common Law. The fundamental principles of law laid down by Madison in his "Memorial and Remonstrance" and by Jefferson in his "Act for Establishing Religious Freedom" were common law and natural law principles which declared, in substance, that the state had exclusive jurisdiction over temporal matter but the Church had jurisdiction over spiritual matters, a separation of church and state based on jurisdiction.

Madison convincingly established that the support of religious teachers was a spiritual matter. His conclusion that the state had no jurisdiction over the support of such teachers because it was a spiritual matter and so the legislature had no

power to enact a law imposing a tax for their support inescapably followed. Madison's "Memorial and Remonstrance" was not an argument, in the main, against the establishment of religion. None of the arguments contained therein was premised on a constitutional provision, certainly not on any establishment of religion clause as is incorporated in the First Amendment. Madison's document was written in 1785, more than four years before the First Amendment was ratified by the first of the state legislatures. It was written exclusively for presentation to the General Assembly of Virginia. Those arguments were based on the prevailing juristic principle that separation of church and state is a fundamental concept of Inter-Church-And-State Common Law, secured as a liberty for the church and a liberty for the state by mutual "legal hands off", a division of jurisdictions.

In his "Memorial and Remonstrance", Madison said:

1. . . . "We maintain that . . . in matters of Religion no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. . . .
2. Because if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but creatures and vicegerents of the former. Their jurisdiction is both derivative and limited; it is limited with regard to the coordinate departments; more necessarily is it limited with regard to its constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained, but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. . . .
3. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? . . .
5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant

pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world. The second an unhallowed perversion of the means of salvation. . . ."

And in Madison's writings, *before the adoption of the First Amendment*, we find him saying: "... there is not a shadow of right in the general government to intermeddle with religion."⁷ And again, "The Government has no jurisdiction over it."⁸

Madison had defended the same thesis in the course of the debates in the Virginia Convention on the subject of the ratification of the Constitution.⁹

Jefferson's pertinent declaration in the Virginia "Act for Establishing Religious Freedom", *before the First Amendment*, was: "That it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."¹⁰

In like tone, Madison, in a private letter,¹¹ written after the First Amendment, said: "The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded agst. by an entire abstinence [*sic*] of the Govt. from interference in any way whatever, beyond the necessity of preserving public order, & protecting each sect agst. trespasses on its legal rights by others."

In some of the state conventions called for the ratification of the Constitution, delegates advanced amendments as to "establishment of religion". Virginia, most experienced of all the states in this respect, urged the following: "... no particular religious sect or society ought to be favored or established in preference to others." New York, North Carolina

⁷ V *Madison* 176.

⁸ V *Madison* 132.

⁹ *American State Papers*, Blakely, (3. ed. rev.), p. 126.

¹⁰ Randall, *The Life of Thomas Jefferson* (1858), p. 220; Padover, *Jefferson* (1942), p. 81.

¹¹ IX *Madison* 484, 487.

and Rhode Island advocated a similar amendment.¹² These were the forerunners of the First Amendment.

The so-called doctrine of separation of church and state, in its *jurisdictional* aspect, can be traced back over seven hundred years to Bracton, author of what has been justly termed "the greatest treatise ever written on the Common Law".¹³ The fact that there was in Bracton's time only one church in England, the Catholic Church, is very noteworthy in this study of separation of church and state. That great scholar, whose name first appears in legal documents and writings in 1240, said:

"Ad papam et ad sacerdotium quidem pertinent ea quae spiritualia sunt, ad Regem et ad regnum ea quae sunt temporalia, juxta illud, 'Coelum coeli domino, terram autem dedit filiis hominum'.

"Et unde ad papam nihil pertinet, ut de temporalibus disponat vel ordinet, non magis reges vel principes de spiritualibus, ne quis eorum, falcem immittat in messem alienum. Et sicut papa ordinare potest in spiritualibus quoad ordines et dignitates, ita potest rex in temporalibus et haereditatibus dandis vel haeredibus constituendis secundum consuetudinem regni."¹⁴

"... pertineat ad forum ecclesiasticum . . . in causis spiritualibus vel spiritualitati annexis."¹⁵

Thus there was no *union* of church and state in England in the thirteenth century, even though there was but *one* church. Bracton clearly sets forth that under the Inter-Church-And-State Common Law at that time the church had jurisdiction over spiritual matters and temporal matters bound to spiritual matters, while the state had exclusive jurisdiction over tem-

¹² *American State Papers*, pp. 128, 129, 130.

¹³ Rooney, "Borrowings in Roman Law and Christian Thought"—*THE JURIST*, VI (1946) 457.

¹⁴ Fol. 415 b.

¹⁵ Fol. 401 b; cf. canon 1553, § 1. *Ecclesia iure proprio et esclusivo cognoscit: 1°. De causis quae respiciunt res spirituales et spiritualibus annexas; . . .*

poral matters. This, it is submitted, represents the true doctrine of separation of church and state.

The Year Books contain many cases wherein the early English courts observed the principle of separation of church and state. One of these cases, *Prior of Castleacre v. Dean of St. Stephens*, (1506), tried in Common Pleas,¹⁶ has been deemed to be of sufficient importance to be twice commented upon in the *Harvard Law Review*, once by Plunkett, and again by Pound.

Plunkett says: ¹⁷ "[the case] is sometimes quoted as an example of the limitation of the powers of the legislature. . . . the material point is that a priory which was 'parson' of a church was suppressed and vested in the Crown by an act of Parliament. Did the Crown thereby become 'parson' of the church? Chief Justice Frowyke summed up after protracted argument:

'As for the other matter, whether the king can be parson by the Act of Parliament, as I see it, it is not a great matter to argue, for I have never seen that a temporal man can be parson without the agreement of the Supreme Head. And in all the cases which have been put sc. of benefices in Wales and benefices which laymen have in their own use, I have seen the matter and the king had them by the assent and agreement of the Supreme Head. So a temporal act without the assent of the Supreme Head cannot make the king parson.'"

Pound cites this case on page 6 of his article, "A Comparison of Ideals of Law", saying: ¹⁸ "When the fifteenth-century English court held an Act of Parliament 'impertinent to be observed' where it sought to effect results in matters spiritual, it did what a court, state or federal, would do in the United States if a state legislature were to prohibit interstate com-

¹⁶ Year Book 21 Henry VII 1.

¹⁷ 40 *Harvard Law Review* (1926) 30 at 48.

¹⁸ 47 *Harvard Law Review* (1933) 1 at 6.

merce by putting an embargo on imports from a neighboring state."

In the common law it is an undisputed principle that the courts may declare an enactment of the legislature null and void, without being obliged to rely on any constitutional provision, where the legislature had no jurisdiction of the persons or subject-matter involved.

Not only the state legislature has no jurisdiction over spiritual matters, but the courts of a state also have no such jurisdiction and by their decrees thereon can not affect the rights and duties of parties. Madison said as much when he stated in his "Memorial and Remonstrance": "5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; . . . [this] is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world. . . ." ¹⁹

The Massachusetts case of *Carter v. Papineau et al.*,²⁰ definitely stands for the proposition that a secular court has no jurisdiction over a spiritual matter.

Effie A. Carter, the wife of Frank Albert Carter of the village of Cochituate in the town of Wayland, in the State of Massachusetts, brought suit, in 1913, for failure to give her communion, against Arthur Bradford Papineau, the rector of St. George's Church of Maynard, who conducted the services of the Episcopal mission in Wayland and William Lawrence, Bishop of Massachusetts (of the Protestant Episcopal Church of America).

She claimed that on or about August 20, 1911 she was a communicant of the Protestant Episcopal Church of America and was lawfully entitled to be present and participate in the services of that church; that on that day she entered a certain building used as a place of worship by that church in Wayland, where she was accustomed to worship, and at the proper time and in a proper manner came forward to partake of the Holy

¹⁹ *Supra*, pp. 265, 266.

²⁰ 222 Mass. 464, (1916).

Communion; but "that the defendants then and there, without cause and without any notice or warning to her, or any charge against her, or any hearing or opportunity by her to be heard, refused to administer to her Holy Communion and repelled her from the Lord's Table without cause, whereby the plaintiff says that the defendants have held her up to public disgrace, humiliation and shame, and have in effect represented that she was an open and notorious evil liver, and the congregation has thereby been offended, and that she was an unfit person to enter and worship in said church."

The Protestant Episcopal Church of America has a body of canons or ecclesiastical law of its own, by which the plaintiff upon baptism and confirmation agreed to be bound, and under which her rights of worship must be determined.

By the "Rubric in the Order for the Administration of the Lord's Supper, or Holy Communion", the "minister" is given authority to refuse the rite to any one whom he knows "to be an open and notorious evil liver, or to have done any wrong to his neighbor by word or deed."

By "Canon 40. Of Regulations Respecting the Laity," Section II, "When a person to whom the Sacraments of the Church have been refused, or who has been repelled from the Holy Communion under the Rubrics, shall lodge a complaint with the Bishop, it shall be the duty of the Bishop, unless he see fit to require the person to be admitted or restored because of the insufficiency of the cause assigned by the Minister, to institute such an inquiry as may be directed by the Canons of the Diocese or Missionary District, and should no such Canon exist, the Bishop shall proceed according to such principles of law and equity as will insure an impartial decision, but no Minister of this Church shall be required to admit to the Sacraments a person so refused or repelled, without the written direction of the Bishop."

The rector had written a letter addressed to Mrs. Carter and before the service he had approached Mrs. Carter in the church and had offered her the letter. She refused to accept it. He

placed it on a seat in front of her with the request: "I want you to read that before the service goes on." The letter forbade her to receive communion "until you satisfy me, or my successor or superiors of your repentance and amendment."

Canon 16 gave to the rector control of the worship and spiritual jurisdiction of the mission "subject to the authority of the Bishop."

Before she brought suit in the state court, Mrs. Carter had her lawyer write to the Bishop, complaining of the rector, and requesting the Bishop's intervention. Obtaining no satisfaction from the Bishop, she brought suit for damages for refusal to give her communion, and also sought additional damages for being prevented by a constable from entering the church on two other occasions.

The case was tried before a jury. At the close of the evidence, the judge, at the request of the defendants, ruled that, as matter of law, the plaintiff could not recover on either count and ordered verdicts for the Rector and the Bishop.

Mrs. Carter brought her case to the Supreme Judicial Court of Massachusetts. The Supreme Court decided against her on the ground that it had *no jurisdiction* over the matter, at least not until she had pursued the matter to a conclusion in the Bishop's Court.

Mr. Justice Braley, speaking for the Supreme Judicial Court of Massachusetts, said in part:

"The plaintiff has not availed herself of this right of appeal to the only personage having the requisite ecclesiastical authority to review her standing as a member and communicant or to pass upon her ceremonial rights in accordance with the principles of 'law and equity'. . . . The letter of her counsel to the bishop, to which no reply appears to have been made, cannot be considered as an appeal which had been denied. It contains only recitals of all her grievances, for the rectification of which his friendly intercession is requested.

"But if an appeal had been properly taken and the decision had been adverse, the plaintiff would have been remediless, for

in this Commonwealth her religious rights as a communicant are not enforceable [*sic*] in the civil courts. . . ."

This Massachusetts case is the only decision on this particular sacramental phase of the subject in the United States. There are two English cases on the point: *Rex v. Dibdin*, (1910)²¹ and *Thompson v. Dibdin*, (1912).²²

In a note in the *Harvard Law Review*²³ on the *Carter v. Papineau* case, it was said:

"In England, the union of church and state gives the secular courts an appellate jurisdiction from the tribunals of the established church. *Rex v. Dibdin*, (1910) P.D. 57; *Thompson v. Dibdin*, (1912) A.C. 533. In America, however, when civil rights are not involved, the secular courts have no jurisdiction over ecclesiastical disputes. *Fitzgerald v. Robinson*, 112 Mass. 371. See *Shannon v. Frost*, 3 B. Mon. (Ky.) 253, 258. . . . if there is a right of appeal to a higher ecclesiastical authority, the courts will not give relief until that right has been exhausted. *German Reformed Church v. Commonwealth*, 3 Pa. St. 282. See *McGuire v. St. Patrick's Cathedral*, 54 Hun. 207, 220. 7 N.Y. Supp. 345, 351. . . ."

Mr. Justice Miller, in the leading case of *Watson v. Jones*,²⁴ speaking for the United States Supreme Court, said:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case

²¹ P.D. 57.

²² A.C. 533.

²³ 29 *Harvard Law Review* (March 1916) 560.

²⁴ 80 U.S. (13 Wall.) 679, at 727, 732; 20 L. ed. 666, at 676-678.

before them. . . . We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania, in the case of *German Reformed Church v. Seibert*, (41 Pa. 21):

‘The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offense against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doctrine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals’ . . .”.

It was not necessary for the minority of the United States Supreme Court in the *Everson* case to base their opinion on the *establishment of religion* clause of the First Amendment. These judges might have argued more logically, if not any more successfully, the proposition that the transportation of the children to the Catholic parochial schools was a spiritual matter over which the State of New Jersey had no jurisdiction, therefore its legislation imposing the tax was “impertinent to be observed”, and consequently the act was null and void. The present authors take the position that, without qualification, such transportation is not a spiritual matter, but, on the contrary is a temporal matter, over which the State has exclusive jurisdiction and so may impose the tax.

Under the Constitution of the United States, the States cannot create interests if they have no jurisdiction. These are the words of section 43 of *Restatement of the Law of Conflict of Laws* as adopted and promulgated by the American Law Institute, in 1934. The Institute made the following comment:

a. Effect of Fourteenth Amendment to Constitution. If a State attempts to exercise power by creating interests with respect to persons or things which it has no jurisdiction to

create, its action is in violation of the Fourteenth Amendment to the Constitution and is void in the State itself. The Supreme Court of the United States may review all cases whether from a lower Federal court or from a State court of last resort which involve a question of the exercise of power on the part of a State when it has no jurisdiction.

It is submitted that it would show better legal scholarship for the United States Supreme Court to decide these cases on the jurisdictional approach rather than on the constitutional approach, especially in view of the fact that in order to make the Fourteenth Amendment effective in the proposition of law set forth in section 43 of *Restatement of the Law of Conflict of Laws* lack of jurisdiction must first be shown, and once lack of jurisdiction is established, there is no need to argue the constitutional law question.

Roger Williams, brilliant and learned minister, had emigrated from England to Massachusetts early in the seventeenth century. He preached that the civil government had no jurisdiction over religious matters. This doctrine disturbed the governmental officials of Massachusetts, and Williams was ordered to leave the colony. He moved to a spot where the city of Providence is now located. There, with others who had joined him, he started a new settlement. The colonists entered into the following compact:

"We whose names are hereunder, desirous to inhabit the town of Providence, do promise to subject ourselves in obedience to all such orders as shall be made for the public good by the major consent of the present inhabitants and others whom they shall admit unto them, *only in civil things.*" (Italics inserted.)

Commenting on this compact, S. E. Forman in *Advanced American History*, at page 41, says:

"In this compact we see the great idea for which Williams stood, namely, the separation of church matters from state mat-

ters. In Providence the government was to have authority only in 'civil things'; in respect to religious affairs it was to have no power whatever."

Under the laws of the United States today the jurisdiction of a church in purely spiritual matters is exclusive of the jurisdiction of the state in which the church is located. The jurisdiction of the state in temporal matters is *per se* exclusive of the jurisdiction of the church.

A church has jurisdiction only over persons who are members of that particular church and over non-members who have consented or subjected themselves to the exercise of jurisdiction over them.

The Catholic Church particularly claims jurisdiction over persons in these words.

"By baptism a person becomes a subject of the Church of Christ with all the rights and duties of a Christian, unless, in so far as rights are concerned, there is some obstacle impeding the bond of communion with the Church, or a censure inflicted by the Church."²⁵

Ever mindful of the limitations upon her jurisdiction this same Church legislates:

"Laws which are purely ecclesiastical in their nature do not bind unbaptized persons, nor baptized persons who do not have sufficient use of reason, nor baptized children who have the use of reason but are under seven years of age, unless the law explicitly rules otherwise."²⁶

A state has jurisdiction over a person if he is within the territory of the state, if he is domiciled in the state although not

²⁵ Cf. Canon 87.

²⁶ Canon 12. The Catholic Church claims jurisdiction over its members in temporal matters bound to spiritual matters as well as in purely spiritual matters. See note 15, *supra*. As to cases of mixed jurisdiction, cf. *THE JURIST*, IV (1944), 551, 552; canon 1553, § 2. As to the baptized non-Catholic, through baptism he has fundamentally subjected himself to the jurisdiction of the Catholic Church. However, in virtue of custom or *epikeia* the tacit exemption of those who are in good faith may be assumed in regard to laws that are not invalidating or disqualifying. Cf. Cicognani, *Canon Law* (trans. O'Hara and Brennan, Philadelphia: The Dolphin Press, 1935), 568, 569.

present there, or if he has consented or subjected himself to the exercise of jurisdiction over him either before or after the exercise of jurisdiction.

These two jurisdictions are mutually exclusive, the jurisdiction of different sovereigns. In the exercise of their jurisdictions the church and the state can affect the rights and duties of those subject to their jurisdictions by legislation, by executive decree, or by a judgment of their courts.

More recently in the United States the majority of judicial controversies involving the principle of separation of church and state have been raised in criminal prosecutions under state statutes or municipal ordinances which make certain acts by churches or members thereof a crime. Almost invariably these defendants contend that the state statutes or municipal ordinances are *unconstitutional* as in contravention of that clause of the First Amendment which provides: "Congress shall make no law . . . prohibiting the free exercise [of religion]".

It is submitted that here, too, the more scholarly approach in these controversies between the church and the state should be, at the inception, at least, one presenting the principles, as set forth in Inter-Church-And-State Common Law, and not the Constitutional Law approach. The restrictive force of the First Amendment is not a delimitation of an existing jurisdiction in the government to create interests in religion. The government never possessed such jurisdiction.²⁷

The traditional teaching of the Catholic Church makes an interesting comparison with the juridical propositions in favor of separation of church and state advanced by Jefferson, Madison, Bracton, Justices Frowyke, Miller and Brayley, the minister, Mr. Williams, and countless judges, canonists, philosophers, scholars and others.

Scholars of church history teach that the foundation of the Church caused deep changes in the social and juridical life of the human race. A new juridical concept and order was

²⁷ See "Freedom of Religion", by O'Brien and O'Brien, in *THE JURIST* VI (1946), *passim*.

placed in the framework of society. The Church as founded by Christ revolutionized the social concepts of antiquity. Christ introduced new concepts: (1) A separation of religion from the national and political sphere; and (2) A separation of ecclesiastical law from the national and political sphere. The national aspect of religion was stressed before the time of Christ. The Roman Empire stressed a cosmopolitan aspect of religion, because in the Pantheon all religions of all conquered peoples were practised. The Jewish religion and state were national. With the foundation of the Church came the idea of a supra-national religion for all people of all times and of all nations without respect to national boundaries. An autonomous supra-national religious law entered the world with the foundation of the Church by Christ. For the first time in history there was a *Societas Perfecta* (Sovereign Society) that was not the state.

Leo XIII, speaking for the Catholic Church, said: ²⁸

“God has divided the government of the human race between two authorities, ecclesiastical and civil, establishing one over things divine, the other over things human. Both are supreme, each in its own domain; each has its own fixed boundaries which limit its activities. . . . Everything therefore in human affairs that is in any way sacred, or has reference to the salvation of souls and the worship of God, whether by its nature or by its end, is subject to the jurisdiction and discipline of the Church. Whatever else is comprised in the civil and political order, rightly comes under the authority of the State; . . .”

On this point Reverend James P. Kelly, J.C.D. says:

“With regard to human law, the Church adheres to the doctrine that all authority is from God, and that in God’s plan for the orderly government of the world, He has delegated His authority to two perfect sovereign societies. Each of these sovereign societies is *independently* and *exclusively* competent

²⁸ Ep. encycl., *Immortale Dei*, 1 nov. 1885—see *Four Great Encyclicals* (1931 edition published by The Paulist Press) at pp. 52 and 53.

to regulate the affairs of men within its own sphere. These two sovereign powers are the Church and the State. The Church was established by God for the spiritual welfare of man in this world and to lead him to an eternity of happiness in heaven. The State was constituted as the supreme authority for the temporal welfare of man in this world. . . . The legitimate civil authority, which we shall call the State, is considered by the Church to have been granted authority from God to legislate, administer and pass judgment within its own sphere, but that sphere is confined to the temporal welfare of man in this world to the exclusion of his own spiritual welfare, and the means established by God to lead man to eternal life."²⁹

Dean Pound says: "In the politics and law of the Middle Ages the distinction between the spiritual and the temporal, between the jurisdiction of religiously organized Christendom and the jurisdiction of the temporal sovereign, that is, of a politically organized society, was fundamental. It seemed as natural and inevitable to have church courts and state courts, each with their own field of action and each, perhaps, tending to encroach on the other's domain, but each having their own province in which they were paramount, as it seems to Americans to have two sets of courts, federal courts and state courts, operating side by side in the same territory, each supreme in their own province. . . ."³⁰

It is only in very recent years that the United States Supreme Court has been experiencing manifest difficulty in cases involving the respective jurisdictions of state and church. The decisions and opinions in the Jehovah's Witnesses cases have been markedly divergent. The recent decision upholding the

²⁹ "Marriage, Divorce and Annulments"—THE JURIST, IV (1944), 246, 247. The Catholic Church holds unswervingly to the doctrine that it is the one true Church. However, the members of this Church realize that the secular law in the United States considers churches of all denominations to be sovereigns and to have exclusive jurisdiction over spiritual matters within their respective spheres.

³⁰ 47 *Harvard Law Review* (1933) 1, at 6.

claimed privilege of a minister of a church to enter without permission upon the land of another for the purpose of exercising his religion by orally preaching, by playing phonograph records of his sermons, by manually delivering printed sermons, or otherwise, was, according to Mr. Justice Reed: "... the first case to extend by law the privilege of religious exercises beyond public places without the assent of the owner." This case was discussed by the authors hereof in a previous article.³¹

The Everson case has apparently given the present nine justices of the United States Supreme Court even more trouble. It would appear that a thorough resurvey is in order of the entire subject of freedom of religion and of separation of church and state from the time of Bracton to the present day.

It is respectfully submitted that unless the United States Supreme Court speedily adopts the true doctrine of separation of church and state, the doctrine based on the separation of their respective jurisdictions, the Court's future decisions on religious controversies will cause large segments of the people of this country the utmost anxiety.

REVEREND KENNETH R. O'BRIEN
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LOS ANGELES, CALIFORNIA

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APPENDIX

Press reports following the Everson decision indicate that of the 48 states, 15 have legislation which authorizes or requires in one form or another, transportation for parochial school pupils and 24 states limit their transportation to public schools only.

³¹ "Freedom of Religion"—THE JURIST, VI (1946) 503. The concept freedom of religion and the concept separation of church and state have several common constituents.

The 15 states authorizing transportation for nonpublic school pupils are California, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New York, Oregon, and Rhode Island.

In Colorado, Louisiana, and Minnesota the state Attorneys General have ruled that their general transportation statutes permit private school pupils to ride on the public school buses.

In Maine, North Dakota, and South Dakota, the Attorneys General have ruled to the contrary.

The 24 states which limit their transportation to public school pupils only are Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Mississippi, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

In Iowa the school bus statute is ambiguous, conflicting opinions of Attorneys General are in existence, and litigation is pending.

In Texas litigation is also pending to clarify the meaning of the statute.

In the State of Washington the statute specifically provides for private school children, but a prior statute was held unconstitutional and legal action is pending on the present law.

Courts in four states—California, Kentucky, Maryland and New Jersey have held statutes valid; six, Delaware, Iowa, New York, Oklahoma, Wisconsin and Washington have held statutes invalid. But in New York, a constitutional amendment subsequently nullified the effect of the court decision.

THE PRIVILEGE OF THE FAITH *

AMONG the more practical problems of ecclesiastical jurisprudence which engage the attention of canonists at the present time, the Privilege of the Faith is one of the most important. That this should be true in the United States is not surprising if we remember two significant facts. First, in the United States the predominant majority of the people are not baptized. It is impossible to make even an approximate estimate, but one may safely surmise that between seventy to ninety millions of the population are unbaptized. Second, divorces are increasing with such lamentable rapidity in the United States that in the current year between 25 per cent and 33 1/3 per cent of marriages performed will terminate in civil divorce. The Privilege of the Faith applied according to the norm of canon 1127 may offer a solution to the otherwise insoluble matrimonial problems which arise upon the conversion of such non-Catholics, who after obtaining civil divorces have attempted, or wish to contract new marriages.

But, as Father Doheny points out in his work *Canonical Procedure in Marriage Cases*, while all authors agree that an extensive concession is granted in canon 1127, they are neither invariably uniform nor clear in their commentaries and interpretations. It is, therefore, the purpose of this paper to discuss the principle embodied in canon 1127 of the Code: "In doubtful matters the Privilege of the Faith enjoys the favor of the law."

Since the promulgation of *The Code of Canon Law* there has been but one general authentic interpretation of the text of canon 1127. This interpretation, which concerns the use

* Paper read at the Annual Meeting of The Canon Law Society of America, at Hotel Pennsylvania, New York City, November 17, 1946, by Rev. Francis P. Kearney, J.C.D.

of the Pauline Privilege by non-Catholics who are doubtfully baptized was given June 10, 1937 by the Congregation of the Holy Office which alone is competent to decide matters which directly or indirectly, in law or in fact, are related to the Pauline Privilege and to the matrimonial impediments of disparity of worship and mixed religion.¹

Except in relation to doubtful baptisms, therefore, the meaning of the canon must be determined according to the norms of canon 18.² It must be remembered also that a study of the historical background of canon 1127 clearly indicates that the legislation restates the former law in its entirety. The interpretation is, then, governed by the provisions of canon 6, 2°; ³ it must be interpreted in accordance with former enactments, especially the decrees, instructions and the solutions of difficulties emanating from the Congregation of the Holy Office and from the Congregation of the Propagation of the Faith. Finally, canon 1127, like the Pauline Privilege and the Constitutions of canon 1125, is a law which, in a very special way, favors the Catholic Faith in its inherent spiritual interests which compel men to accept it as the true religion of Christ. It is, therefore, to be interpreted widely, for such laws even though they establish exceptions to the common law are considered favorable, not odious, and are not to be given a strict interpretation. From the very nature of the principle involved the desirability of a broad interpretation is evident. Narrow interpretation could hardly be reconciled with the terms and intent of the canon. It is necessary to keep these principles of interpretation in mind to analyze the exact nature of the concepts found in canon 1127.

¹ Cf. Can. 247, § 3.

² Can. 18. *Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum.*

³ Can. 6, 2°. [*Codex vigentem huc usque disciplinam plerumque retinet, licet opportunas immutationes afferat. Itaque:*] *Canones qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos auctores interpretationibus, sunt aestimandi; . . .*

The term "Privilege of the Faith" has a multiple sense. It may be understood as a general principle conferring the right to choose in doubtful cases that probable solution which will be favorable to the acquisition or the preservation of the faith. But as its position in the Code indicates, canon 1127 represents a specific application of this very general principle. The legislator has inserted canon 1127 under the article *De Dissolutione Vinculi*, which is the first article of Chapter X, *De Separatione Coniugum*, under the title on Matrimony. As understood in canon 1127, the Privilege of the Faith may be viewed as a concession granted upon the fulfillment of certain specified conditions to the convert to the true faith, whereby he or she is freed from a doubtful marriage bond or whereby his or her newly contracted marriage is regarded as valid. The *privilegium fidei* of canon 1127 therefore affects only matrimonial problems. In this sense the term is of ancient origin, for until comparatively recent times the term "Privilege of the Faith" was used exclusively to indicate the Pauline Privilege.

In its strict sense the Privilege of the Faith is understood as the faculty granted to a convert from infidelity, through power divinely bestowed, whereby the convert may contract a second marriage after the reception of baptism, if his infidel consort departs, that is, if the latter refuses to be baptized or, at least, to live peacefully with the convert without blaspheming God. Some authors apply canon 1127 only to doubts about the fulfillment of the conditions necessary for the use of the Pauline Privilege or the Privilege of the Faith in the strict sense, for these terms are identical.

Such restriction is unwarranted. In canon 1120⁴ the Code uses the term Pauline Privilege expressly. In canons 1069⁵ and 1127,⁶ however, the term "Privilege of the Faith" is em-

⁴ Can. 1120, § 1. Legitimum inter non baptizatos matrimonium, licet consummatum, solvitur in favorem fidei ex privilegio Paulino.

⁵ Can. 1069, § 1. Invalide matrimonium attentat qui vinculo tenetur prioris matrimonii, quanquam non consummati, salvo privilegio fidei.

⁶ Can. 1127. In re dubia privilegium fidei gaudet favore iuris.

ployed. For in its wide sense the Privilege of the Faith extends also to the plenitude of the vicarious or ministerial power in virtue of which the Roman Pontiff may and, in fact, does dissolve the bond of marriage when such a bond would be an obstacle to conversion or to the practice of the faith, on condition that the welfare of souls demand the use of this power, that such dissolutions are not the occasion of scandal and that it is evident that the marriage was not again consummated after the baptism of both parties.

Canon 1127, then, would apply not only to the Pauline Privilege but also to the Constitutions of canon 1125 and to those dissolutions of the natural bond of marriage between a person baptized in heresy and one who is certainly not baptized. To the Privilege of the Faith in the wide sense must be referred: 1) the apostolic power to dissolve a legitimate marriage entered into and consummated in infidelity, when conditions required for the use of the Pauline Privilege are only doubtfully fulfilled or where they are certainly not fulfilled; 2) the power used time and again to dissolve, in favor of the faith, a marriage validly entered into and consummated by a party baptized in heresy with an unbaptized person, if one of the parties is converted to the Catholic Faith; 3) the power which Gregory XIII used in the Constitution *Populis*,⁷ to dissolve in favor of the faith, marriages contracted and consummated in infidelity, which upon the conversion and the baptism of both parties had become sacramental, but which had not been again consummated after they had taken on the sacramental character. The Pauline Privilege is, as it were, a species under the generic Privilege of the Faith, which has no limitations except the limitations of the supreme power of the Pope and which extends to every marriage which is not consummated, sacramental marriage.⁸

⁷ 25 Jan. 1585; it is the last of the documents appended to *The Code of Canon Law*.

⁸ Of course, practically speaking, the Church will not dissolve the bond of a marriage made possible by a dispensation from disparity of cult.

The favor of the law or the benefit of the law is a certain juridical preference applicable to practical cases of doubt and destined to aid the propagation of the faith, wherever this is feasible without causing harm to others. The meaning of the term "favor of the law" in canon 1127 must be considered in relation to the same term in canon 1014.⁹ As is readily evident canon 1014 is the pivotal point of all matrimonial procedure. No matter on what score a marriage is attacked, the plaintiff is confronted with the law there established. There are two consequences of this principle: 1) When a marriage has evidently been contracted it must be considered valid until its nullity has been fully proved; 2) When so-called marriage has the semblance of true marriage, it must be so regarded until the contrary is fully proved. The principle enunciated in canon 1014 applies to all marriages. This canon in wording and operation is a typical presumption of law; it is an unvarying norm based on divine law.

The general principle of canon 1014 is subject to one exception expressed in the canon itself. For the legislator safeguarded the principle of canon 1127, "In doubtful matters, the Privilege of the Faith enjoys the favor of the law." In canon 1127 the term, "favor of the law," is to be understood as the disposition of the law to admit the use of the Privilege of the Faith in a doubtful matter concerning marriage. The presumption in favor of the validity of marriage which is to be upheld in the face of doubt of law or of fact yields to a presumption in favor of the faith or to the liberty of a convert from infidelity. Canon 1127, therefore, is a presumption of law in relation to all marriages which are capable of dissolution within the limits of the Privilege of the Faith. It is to be noted that it is not however a *presumptio iuris et de iure*. That would imply that once canon 1127 had been applied to solve a marriage case, the solution given would be an adjudi-

⁹ Can. 1014. *Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur, salvo praescripto can. 1127.*

cated matter. This is never true of marriage cases except with regard to the civil effects. Canon 1127 is not merely a presumption of ecclesiastical law; its nature and the effect of its application prove clearly that it is based on and governed by the divine law. A valid marriage contracted in infidelity can be dissolved only by the use of the Pauline Privilege or of the wider Privilege of the Faith. But admittedly, in a case to which canon 1127 is applied, the conditions for the use of the Pauline Privilege are only doubtfully fulfilled. The solution of the doubt therefore, can be attributed only to the ministerial power of the Pope, which he receives directly from Almighty God and which he exercises in God's name. This means that the favor of the divine law expressed as positive ecclesiastical law is necessary to explain the legislation in canon 1127.

In entering upon a discussion of the nature of the doubtful cases envisaged in canon 1127, it is well to begin with the notion of doubt. A proposition which is regarded as doubtful is one in regard to which sufficient evidence is not available; in itself the proposition is true or false. Canon 1127 may not be invoked unless the doubt in question is positive and objective. For the application of the canon it is sufficient that the doubt which persists after serious investigation should exclude moral certainty for one side or the other. From the nature of canon 1127 the doubt must be, morally considered, insoluble; if it is at all possible to arrive at certainty this must be done. The Holy Office insists on careful investigation which can never be omitted in a matter of such great importance. The doubt may be either a doubt of law or a doubt of fact. A doubt of law exists when there is no certainty about the existence, permanence, force or comprehensiveness of the law. A doubt of fact exists when the existence and theoretical comprehensiveness of the law are certain, but the existence of the fact or circumstances juridically required for the assumption of its existence in a given case are not certain. These considerations are important to the discussion of specific doubtful matters in relation to canon 1127.

Outstanding among the various possibilities for the application of canon 1127 in the minds of all canonists was that of its availability in regard to doubtful baptism. This question is, of course, now definitely settled. On June 10, 1937,¹⁰ the Holy Office issued a decree which answered two questions. The first question was: "Whether, in a case of insoluble doubt about baptism in a marriage contracted by two doubtfully baptized non-Catholics, the use of the Pauline Privilege, in virtue of canon 1127 of the Code, can be permitted to either party converted to the faith?" The Holy Office answered: "In the negative."

The second question was: "Whether in the case of an insoluble doubt about baptism in a marriage contracted between an unbaptized person and a doubtfully baptized non-Catholic, Ordinaries can permit the use of the Pauline Privilege, in virtue of canon 1127, to either party converted to the faith?" The reply was that recourse must be made to the Holy Office in individual cases.

The reply to the first question is not surprising. The reason for it is obvious. If both baptisms in the case presented were objectively valid, the marriage in question was sacramental. If that marriage were consummated, no authority on earth could dissolve the bond.

The second reply necessitated the modification of the opinion of many authors who previously had held that canon 1127 could be invoked and that the Ordinary could authorize the use of the Pauline Privilege when the baptism of only one party to a marriage contracted before conversion to the Catholic faith remained insolubly doubtful, when the other party was certainly not baptized. It will be noted of course that the Holy Office did not deny the possibility that the Pauline Privilege might be applied. It merely reserved to the Holy See the right to decide what was to be done in each individual case. Practically speaking the local Ordinary would

¹⁰ S.C.S.Off., decr. 10 iun. 1937—AAS, XXIX (1937), 305; Bouscaren, *The Canon Law Digest*, II, 343.

do well in investigating such cases to follow the procedure outlined in the instruction of May 1, 1934, to obtain dispensation "*super vinculo naturali*." Obviously while this decree of the Holy Office limits the applicability of canon 1127, it also prevents any possible laxity in a matter of the gravest import.

Another wide field for the application of canon 1127 is found in the investigation of the doubtful existence or the doubtful validity of infidel marriages. A very thorough investigation is demanded in each individual infidel marriage, even though it may appear that such unions are no more than concubinage or purely temporary and experimental in nature. It must be ascertained whether or not there existed any diriment impediment of the natural, divine or civil law and whether the customary ceremonies of the country were observed in the marriage. The nature of the consent exchanged will, of course, be carefully examined in the light of canons 1081-1087, which with a few minor and evident exceptions are a clear statement of the natural law. In investigating the formalities and ceremonies for contracting marriage among infidels the investigators must follow the instructions of the Holy Office. Other points beside the initial circumstances must be examined: such as, the duration of the union, the birth of children, the growth and continuance of mutual love and other such highly indicative circumstances. Again those marriages are to be considered valid which are celebrated with the usual formalities and ceremonies of the country, provided that the mutual and present consent of the parties has been sufficiently expressed in that particular locality. It will be noted that these points will be of particular importance in the United States in judging the validity of common-law marriages.

But despite the most thorough investigation in an individual case it will frequently happen that the existence or the validity of the marriage remains doubtful. It is then that the proper ecclesiastical authority, in virtue of canon 1127, may solve the doubt in favor of the faith and thus establish the free state of

the convert to Catholicism, thus opening the way to a new marriage.

Among those peoples where polygamy is the practice one of the frequent causes of doubt in regard to the validity of marriage will be doubt as to who was the first wife of a polygamist convert. It was such doubt which occasioned the concession of Paul III in his Constitution *Altitudo*,¹¹ now extended by canon 1125 to similar cases throughout the world. In relation to canon 1127 all canonists list as one doubtful matter which may be settled by the canon, a doubt as to the person of the first wife of a convert who has had many wives. The principle of canon 1127 may be applied for the benefit of converted polygamists or polyandrists in the case of those who have lived in successive or in simultaneous concubinage and, in the reckoning of the spouses in such instances, even consorts dismissed by a decree of divorce in civil court may be included. The instances in the United States where doubt as to the identity of the first consort is the reason for the doubt as to the validity of marriage should be comparatively rare, but in view of the prevalence of divorce such doubt may arise. If thorough investigation fails to reveal the identity of the first consort the Privilege of the Faith may be invoked, if all other required conditions are fulfilled.

But such doubts as to the validity of marriages contracted in infidelity represent only part of the benefit derived from the application of canon 1127. Such doubts are concerned, really, with only the first of the conditions requisite for the application of the Pauline Privilege. That the use of the Pauline Privilege be certainly valid four conditions must be present. First, the marriage bond to be dissolved must have been certainly contracted while both parties were unbaptized. Secondly, one party must be converted from infidelity by valid baptism. Thirdly, the infidel party must desert the convert, that is, the unconverted party must persevere in infidelity and refuse to continue peaceful cohabitation with the convert.

¹¹ 1 iun. 1537; it is the VIth document appended to *The Code of Canon Law*.

Fourthly, by means of the interpellations it must be fully established that the infidel party has really departed. In regard to the last two of these conditions there are several possible sources of doubt which may arise, the solution of which many canonists find in the application of canon 1127.

From the insistence which the Church places on the obligation of making the interpellations, it is evident that affirmative answers to the questions proposed as to conversion or at least peaceful cohabitation, are presupposed to be given in sincerity. But if it is known that these answers are insincere and that they were made out of ill will toward the convert, the affirmative replies are to be considered as negative. This case would be verified if the replies of the infidel were deliberately ambiguous and remained so, though opportunity had been given to him to clarify his response. It would be verified also if the infidel refused to reply at all or if the response were continually and obstinately delayed for a period of six months (even less if there were urgent reasons for permitting a new marriage to the convert sooner); or if the infidel remained in hiding lest he be reached. A consideration of the nature of these possibilities affords sufficient grounds to justify the conclusion that the departure of the infidel is truly verified.

It must be noted, however, that the response of the Holy Office upon which this interpretation of the insincerity of the infidel's reply is based, required that this insincerity be demonstrated by certain proof. The Vicar Apostolic of Mongolia asked: ¹² What is to be thought of the affirmative reply of an infidel, namely, that he is willing to live peaceably, without contumely to the Creator, if there is solid ground for the fear that he may give or sell his converted wife to others. The Congregation replied that if the interpellations had not been made, the Vicar Apostolic should use his faculties to dispense in extraordinary cases. But if the interpellations had already been made and the evil disposition of the husband was proved

¹² S.C.S.Off (*Mongoliae*), 29 nov. 1882—*Fontes*, n. 1075.

by *certain* arguments, the Congregation directed that the affirmative reply be considered negative and that correspondingly the woman might marry again. But if certain proof were lacking the Congregation demanded that each case be forwarded to the Holy See for solution. In other words the Holy See reserved to itself the solution of doubts concerning the sincerity of the response to the interpellations.

In relation to canon 1127 it is of practical importance to determine whether this recourse must still be made should such doubts arise. Practically every canonist maintains that the solution of a doubt concerning the sincerity of the infidel's response to the interpellations falls within the limits of the canon.¹³ In view of this unanimity there is no reason for hesitation on the part of the local Ordinary or his delegate in applying the canon under such circumstances. Canon 1127 is part of the law of the Church and has, therefore, greater legal value than the response cited. A second marriage contracted by a convert on the strength of such an application of the principle of canon 1127 would certainly be valid and licit.

Another problem that may arise in regard to the required interpellations is that of doubt as to sufficiency of causes for dispensing from them in individual cases. The dispensation involved may be one that relaxes the need of proposing both of the questions, or only one of the questions; it may be one that is given by the Holy See directly or through its delegate indirectly; it may be one that is granted either by means of special faculties and indults or in virtue of the law of the Code. This dispensation cannot be granted unless there is present a just and reasonable cause, the existence of which has been determined at least by a summary extra-judicial investigation. If after thorough investigation true doubt persists as to the sufficiency of the causes in a particular case, canonists are unanimous in the opinion that in virtue of canons 1127 and

¹³ Cf. Gasparri, *De Matrimonio*, (2 vols., Romae: Typis Polyglottis Vaticanis, 1932), n. 1168; Cappello, *De Matrimonio*, (4 ed., Taurinorum Augustae: Marietti, 1939), nn. 780, 788.

84, § 2,¹⁴ the dispensation may be lawfully requested and lawfully and validly granted.

To complete our consideration of those doubtful matters coming within the scope of canon 1127, it will be necessary to mention that doubt may sometimes arise as to the justice of the motives of the infidel consort in refusing cohabitation with the convert. If the infidel is completely opposed to continuing marital life with the convert, it is immaterial what motive has led him to arrive at this decision, provided only that the newly converted spouse did not, after baptism, furnish a cause which warranted the infidel party's separation as a just and reasonable procedure. Thus, if after baptism, the converted party is guilty of adultery, the law forbids the use of the Pauline Privilege.

However, if well founded doubt remains after thorough investigation of the motives which impelled the infidel to depart, the Privilege of the Faith may be invoked. It may happen that the converted party is truly at fault, but it is morally certain that the fault is entirely unknown to the infidel, that it is inconsequential to him and that he refuses cohabitation in any case. The convert's right to use the Pauline Privilege is doubtful, but in just such a case the Holy Office permitted its use and added to its rescript the formula: *et ad mentem: mens est ut in dubiis, iudicium sit in fidei favorem*. It is certain that in view of the decrees of the Holy Office given on April 19, 1899,¹⁵ and the principle of canon 1127, the convert does not jeopardize his right to a new marriage. The infidel is to be considered as having departed unjustly.

In concluding this brief and imperfect discussion of a fascinating problem, we may note that canon 1127 may be invoked only after prudent and conscientious effort expended in meticulous investigation has failed to dispel doubt. The Holy See has ever insisted upon the utmost caution in such weighty

¹⁴ Can. 84, § 2. *Dispensatio in dubio de sufficientia causae licite petitur et potest licite et valide concedi.*

¹⁵ S.C.S.Off., 19 apr. 1899—*Fontes*, n. 1220.

matters. It is not necessary to institute formal, judicial inquiry but at the same time all due safeguards must surround the summary extra-judicial investigation which without fail must be made in every case considered under canon 1127.

It must be noted also that one may not after any fashion consider the application of canon 1127 the equivalent of a radical sanation of the second marriage entered into through its application. Nor does canon 1127 grant any concomitant power to dispense from impediments which would obstruct the validity of the second marriage. These affect the second marriage and the proper dispensation must be obtained as in any other case. The dispensation would, of course, be granted after baptism and before renewal of consent.

Certainly even a brief review of the legislation of the Church, of Her instructions and decisions relative to the Privilege of the Faith must convince us that in every possible way She wishes to make conversion and the practice of the true faith easy for all those who come to Her from the darkness of infidelity into the light and the glory of the Kingdom of God.



THE JURIST takes this opportunity of noting the appearance of the third edition of the *Introductio in Codicem* of Very Rev. Udalric Beste, O.S.B., Rector Magnificus of the International College of St. Anselm in Rome, a consultant of the Supreme Sacred Congregation of the Holy Office, and a member of commissions in the Sacred Congregations of the Sacraments and of Religious.

IS JUDICIAL OR PARTICULAR INTERPRETATION AUTHENTIC INTERPRETATION?

THE authentic interpretation of the law, according to the teaching common to canonists before the promulgation of *The Code of Canon Law*, is that which has the authority and force of law. Reiffenstuel¹ (1641-1703) teaches: "Interpretatio necessaria, seu authentica, generatim est illa . . . quae vim legis obtinet." Schmalzgrueber² (1663-1735) writes: "Authentica est quae fit per aliam legem, latam ad declarandam priorem; et hinc eandem auctoritatem habet, quam ipsa lex." Pichler³ (1670-1736): "Authentica habet vim legis." Ferraris⁴ (+ circa 1763): "Interpretatio authentica seu necessaria . . . obtinet eandem auctoritatem ac ipsa lex, quam declarat." De Angelis⁵ (1824-1881): "Dicitur authentica quia habet eandem auctoritatem ac lex, cum sit eodem modo verbum legislatoris, sicut est lex." C. Lombardi:⁶ "Interpretatio authentica, quum non sit nisi legis existentis declaratio, eandem cum hac vim obtinet." D'Annibale⁷ (1815-1892): "Authentica instar legis est."

An authentic interpretation, as is evident from the very qualification "authentic," is one that comes from the author of the law, his superior or successor, or from another to whom

¹ *Ius Canonicum Universum*, lib. I, tit. II, n. 359.

² *Ius Ecclesiasticum Universum*, tom I, pars I, tit. II, n. 44.

³ *Ius Canonicum secundum Quinque Decretalium Titulos Explicatum*, lib. I, tit. II, n. 72.

⁴ *Prompta Bibliotheca, Canonica, Juridica, Moralis, Theologica necnon Ascetica, Polemica, Rubricistica, Historica*, s. v. "lex", art. V, n. 19.

⁵ *Praelectiones Iuris Canonici ad Methodum Decretalium Gregorii IX Exactae*, p. 58.

⁶ *Iuris Canonici Privati Institutiones* (2. ed.), p. 73.

⁷ *Summula Theologiae Moralis*, pars I, n. 184.

the legislator has given authority to interpret the law. Thus Baldo (+ 1400) long ago had said: ⁸ "Nota quod interpretatio legis vel canonis pertinet ad conditorem, sed hoc dictum non est restringendum ad personam, sed ad officium." But Felino Sandeo (1444-1503) teaches the contrary: ⁹ "Potestas interpretandi coeret personae, adeo quod non transit in alium . . . Item successor in officio non potest interpretari sententiam praedecessoris." With this opinion Filippo Decio (1454-? 1537) concurs.¹⁰ Suarez (1548-1617), however, while making the following admission: "Verum quidem est eundem hominem posse certius explicare suam mentem et sensum quem revera habuit quando legem condidit, quia solus ipse voluntatem suam certo cognoscit," observes: "Nihilominus tamen potest successor interpretari sensum in quo lex recipienda est et observanda, et hoc modo dicitur haec authentica interpretatio. Ratio est quia lex non procedit a persona nisi ut habente potestatem, et lex semper pendet ab eadem potestate, in quacumque persona sit: ergo qui in eadem potestate succedit semper potest praedecessorum leges interpretari."¹¹ As Giacchi demonstrates,¹² the teaching of Suarez is that most commonly held by the approved authors.

This commonly accepted concept of the authentic interpretation of law has in its favor the sources not only of Canon Law, but also of Roman Law. Thus, e.g., we read in Roman Law: "Si leges condere soli imperatori concessum est, et leges interpretari solo dignum imperio esse oportet."¹³ "Quis legum aenigmata solvere et omnibus idoneus esse videbitur

⁸ Baldus de Ubaldis, in *Codicem*, lib. I, tit. XIV, de *Legibus et Constitutionibus*, 1, 12, *Si imperialis*, n. 3.

⁹ *Commentaria super Decretales*, lib. II, tit. I, de *Iudiciis*, cap. XII, *Cum venissent*, n. 2.

¹⁰ Cf. his *Commentaria in Decretalia*, lib. II, tit. I, de *Iudiciis*, cap. XII, *Cum venissent*, nn. 24, 26.

¹¹ *Tractatus de Legibus et Deo Legislatore*, lib. VI, cap. I, n. 2.

¹² Cf. his *Formazione e Sviluppo della Dottrina della Interpretazione Authentica in Diritto Canonico* (Milan, 1935), pp. 35-38.

¹³ C. (1. 14), 12.

nisi is, cui soli legislatorem esse concessum est?"¹⁴ "Inter aequitatem iusque interpositam interpretationem, nobis solis et oportet et licet inspicere."¹⁵ "Si quid vero in iisdem legibus latum fortassis obscurius fuerit, oportet id imperatoria interpretatione pateferi."¹⁶ "Legis interpretationem culmini tantum principali competere nemini venit in dubium, cum promulgandae quoque legis auctoritatem fortunae sibi vindicat eminentia."¹⁷

While the commentators on Roman Law did not deny a judicial and doctrinal interpretation, they unanimously affirmed that only the interpretation given by the legislator could have binding and universal value. Thus Azo¹⁸ answers to the question: "Quis interpretatur leges?" "Hi omnes, qui condunt." But he adds also "et magister . . . et iudex," with the observation: "Ei soli (principi) licet ut interpretatio sit generalis et necessaria." It is not surprising, therefore, that in the glosses of the Justinian Code is found the following rule: "Eius est interpretari, cuius est condere."¹⁹ As a quotation from the sources from Canon Law, we may cite the following: "Unde ius prodiit, interpretatio quoque procedat".²⁰ Among the Decretalists, Pope Innocent IV (Sinibaldo de' Fieschi) (1243-1254) is authority for the comment: "Condentis enim est interpretari."²¹

Nevertheless, there are certain notable canonists who have included within the range of authentic interpretation every obligatory interpretation of the law, even the judicial sentence

¹⁴ *Loc. cit.*

¹⁵ C. (1.14) 1.

¹⁶ C. (1.14) 9.

¹⁷ N. 143, praefatio.

¹⁸ *Summa in Codicem*, lib. I, tit. XIV, *de Legibus et Constitutionibus Principum et Edictis*, n. 12.

¹⁹ C. (1.14), *sommario*.

²⁰ C. 31, X. *de sententia excommunicationis*, V, 39. cf. also c. 8, *de concessione praebendae et ecclesiae non vacantis*, III, 7 in VI°.

²¹ In *Quinque Decretalium Libros . . . Commentaria Doctissima*, lib. II, tit. I, *de Iudiciis*, c. XII, *Cum venissent*.

of a competent judge. A judicial sentence, they argue, as a matter of fact also proceeds from one invested with authority, and is necessary, although particular (*data inter partes*), and not general. Reiffenstuel, who makes a distinction in the necessary or authentic interpretation between the general, written interpretation and the general unwritten or particular, writes: "Interpretatio necessaria particularis, seu non generalis, est ea quae fit per iudicem. . . . Iudex etenim est iuris interpres in causa dubia, eiusque sententiae, tanquam habenti vim particularis authenticae interpretationis, tenetur [sic] partes litigantes obsequi, nisi ad iudicem superiorem appellaverint."²² Wernz (1842-1914), follows the distinctions of Reiffenstuel, and writes: "[interpretatio] particularis vero dicitur, si tantum inter partes v.g. per sententiam iudicalem ius facit."²³

This concept of an authentic interpretation, given by an authority other than the legislative, is nowhere to be found in the sources. Thus in the response of the Sacred Consistorial Congregation, dated February 11, 1911, there is a nice distinction between the "*facultas authentice interpretandi*," which had been recognized as within the competence of the Sacred Congregations and denied to the Sacred Tribunals of the Rota and the Signatura Apostolica, and the "*facultas interpretandi iuridice in casibus particularibus*," which was attributed to the aforesaid Tribunals.²⁴ The said concept was studiously neglected by many canonists before the Code, some of whom positively rejected it. The canonists who wrote after Reiffenstuel and before the promulgation of the Code certainly knew the distinction made by Reiffenstuel. Nevertheless, Wernz is the only author of said period who accepts his distinction. On the other hand, Pichler,²⁵ Ferraris,²⁶ Aichner²⁷ (1816-

²² *Ibid.*, n. 362.

²³ *Ius Decretalium*, I, n. 128.

²⁴ *Fontes*, n. 2009.

²⁵ *Loc. cit.*

²⁶ *Loc. cit.*

²⁷ *Compendium Iuris Ecclesiastici* (12. ed.), p. 756.

1910), Bouquillon²⁸ (1840-1902), Ojetti²⁹ (1862-1932), are among the canonists who reject Reiffenstuel's distinction.

The Code of Canon Law, however, due perhaps to the influence of Wernz, strangely recognizes or seems to recognize this concept of interpretation which was unknown to the sources of Roman and Canon Laws, upheld by only two pre-Code canonists and rejected by the great masters. For Canon 17, which treats of authentic interpretation, decrees in paragraph three: **Data autem per modum sententiae iudicialis aut rescripti in re peculiari, vim legis non habet et ligat tantum personas atque afficit res pro quibus data est.**

Does the cited text refer to sentences and rescripts which come from the legislator, or to sentences and rescripts proceeding from persons and powers other than legislative? Commentators have, as a rule, understood the text in the second sense. Maroto³⁰ (1875-1937), Cicognani,³¹ Chelodi (+ 1922), Bertagnolli,³² Michiels,³³ Van Hove,³⁴ all of whom are among the foremost commentators on *The Code of Canon Law*, have unanimously embraced this new concept of authentic interpretation, and completely forgotten the ancient and traditional concept. The example of Ojetti is typical of the post-Code departure from the old teaching. In his *Synopsis Rerum Moralium et Iuris Pontificii* of 1904, Ojetti defined as the authentic interpretation "quae fit auctoritate illius qui potest legem condere . . . et est ad instar legis." In his *Commentarium in Codicem*,³⁵ he states that an authentic interpretation is also that which "fit a magistratu."

²⁸ *Theologia Moralis Fundamental*, n. 124.

²⁹ *Commentarium in Codicem Iuris Canonici*, I, 134.

³⁰ *Institutiones Iuris Canonici ad Normam Novi Codicis*, n. 236.

³¹ *Canon Law* (authorized English version by J. O'Hara and F. Brennan), p. 599.

³² *Ius de Personis*, n. 67.

³³ *Normae Generales Iuris Canonici*, I, 383, 395.

³⁴ *De Legibus Ecclesiasticis*, nn. 242, 245, 246.

³⁵ *Loc. cit.*

The new opinion, although held unanimously by post-Code commentators, is at variance: 1o. *with the very notion of authentic interpretation*, which must proceed from the legislator, if it is to be in fact authentic; 2o. *with the proper extension of its binding force*, which according to the constant juridical tradition both canonical and civil should be as general as that of the law. Moreover, the Motu proprio, "*Cum iuris canonici*," in which is instituted the "Commissio ad Codicis Canones Authentice Interpretandos," explicitly decrees that the Pontifical Commission alone enjoys the right authentically to interpret the canons of the Code: "Consilium seu *Commissionem*, uti vocant, constituimus, cui uni ius erit Codicis canones authentice interpretandi." Therefore, all other organs issuing sentences and rescripts are excluded from authentically interpreting the canons of the Code. For this reason it is necessary to correct the cited response of the Sacred Consistorial Congregation of February 11, 1911. The Motu proprio, "*Cum iuris canonici*," explicitly withdraws from the Roman Congregations the "facultas authentice interpretandi," when it defines their ordinary function "curare ut Codicis praescripta religiose serventur, tum *Instructiones*, si res ferat, edere, quae iisdem Codicis praeceptis maiorem et lucem afferant et efficientiam pariant."

Even if, contrary to the common opinion, we would think that paragraph three of canon 17 refers exclusively to sentences and rescripts proceeding from the legislator, the norm therein contained would have only an historical explanation, and would lack an essential requisite of authentic interpretation, namely, that of a general binding force. Moreover, at least with regard to the interpretation 'per modum sententiae iudicialis,' the norm contained in canon 17, § 3 would be very rarely applied.

However the interpretation "data per modum sententiae iudicialis aut rescripti in re peculiari" is understood, *it cannot be said to proceed from the legislative authority* (cf. Motu proprio, "*Cum iuris canonici*"), and *by nature it is devoid of*

general binding force. Such an interpretation, therefore, lacks the essential attributes of authentic interpretation. It may be called authentic only in an analogical sense, i.e., by reason of the source from which it proceeds, which may be the same person or the same organ as that from which proceeds the law, or by reason of the obligation which bears some resemblance to the law. But even when such an interpretation is made by the legislator, it is given in virtue of a power other than the legislative, and the obligation which it begets is limited to the parties to the suit.

Our opinion is confirmed by the manner in which the distinction of Reiffenstuel and Wernz had its origin. The ancient Glossators and Commentators of the *Corpus Iuris Civilis* recognized only two kinds of interpretation: "*necessaria*," i.e., obligatory, and "*non necessaria*." The former could be either general or particular. Judicial interpretations were called particular. If one wishes to establish the accuracy of this statement, we refer him to the following sources from the Roman Law: the gloss on the law, "*Si de interpretatione*;"³⁶ the gloss on cap. I, "*inter aequitatem*," tit. *de Legibus et Constitutionibus principum*;³⁷ the comment of Azo,³⁸ and others without number. The chief sources from Canon Law are: the commentators on the Decretals,³⁹ Antonius de Butrio⁴⁰ (1338-1408), Goffredus de Trano,⁴¹ and Panormitanus⁴² (1386-? 1453).

³⁶ D. (1.3) 37.

³⁷ C. (1.14) 1.

³⁸ *Loc. cit.*

³⁹ Cf. c. 1, X, *de postulatione praelatorum*, I, 5, s. v. "interpretatus".

⁴⁰ *Super Decretalium Libris Commentaria*, lib. I, tit. *de postulatione praelatorum*, cap. I. n. 60.

⁴¹ *Summa in Titulos Decretalium* (1241-1243), tit. II, *de Constitutionibus*, nn. 21, 22.

⁴² *Commentaria in Quinque Libros Decretalium*, lib. I, *de postulatione praelatorum*, cap. I, nn. 18-20.

Now Reiffenstuel superimposed the concept of authenticity upon that of necessity. But the latter, according to the more universal teaching, has a wider application than the former. Wernz followed Reiffenstuel.

If the interpretation "*data per modum sententiae iudicialis aut rescripti in re peculiari*" does not fall within the scope of the authentic interpretation properly so called, it is, strictly speaking, outside the scope of canon 17 which precisely and exclusively treats of the authentic interpretation. Thus viewed, paragraph three of canon 17 ("*Data per modum sententiae iudicialis aut rescripti in re peculiari* [interpretatio] ") could have been constituted, for the sake of technical precision, the object of a distinct canon. Since the cited paragraph binds in a particular case, it could thus have been inserted after the canon which considers the authentic interpretation, i.e., binding upon all, and the canons which govern every kind of interpretation, i.e., between canon 17 and the canons immediately following.

CHARLES E. PARK

LANCASTER, PA.

At the final conference of the Riccobono Seminar of Roman Law in America, held May 12, a paper was read by the retiring *Magister*, Gaines Post, Ph.D., of The University of Wisconsin, Department of History. His topic was, "The Theory of Public Law and the State in the Thirteenth Century". A paper on "The Lawyer and the Federal Government" was read by George T. Washington, Ph.B., B. Litt.-Law, LL.B., Assistant Solicitor General of the United States; James H. McGrath, Ph.B., LL.B., LL.D., Senator from Rhode Island, read a paper on "The Functioning of the Reorganization Act in the Eightieth Congress". Appellate Court Competition Awards and Trust Law and Aviation Law Prizes were awarded at the end of the conference by Felix Frankfurter, D.C.L., LL.D., Associate Justice, Supreme Court of the United States.

Cases and Studies

MARRIAGE IN CONVENT CHAPEL

The Sisters have asked me to assist at the marriage of one of the young women who attended the academy here and who for sentimental reasons desires to be married in the semi-public oratory, used by the Sisters and students alike, since it is the only chapel on the grounds. Indeed, the novices and postulants also use it for their visits and common exercises.

I have the permission of the pastor of the young woman, who also certifies that the banns have been called and that both parties, Catholics, are free to marry.

However, the pastor of the place here says it is all foolishness and refuses to delegate me for the marriage.

PRUDENS

Canon 1109, § 2, lays down the rule that local Ordinaries may not permit the celebration of marriage in the oratories of women religious except in a case of urgent necessity.¹ Sentimental reasons are not sufficient to justify this permission.² Of such a nature is the reason based on the education of the bride in the school served by the oratory.³ The gravity demanded of the justifying reason is illustrated by the example given by Cappello and Gasparri, i.e. the absence of any other church or chapel.⁴

¹ Can. 1109, § 2. *Matrimonium in aedibus privatis celebrari Ordinarii locorum in extraordinario tantum aliquo casu et accedente semper iusta ac rationabili causa permittere possunt; sed in ecclesiis vel oratoriis sive Seminarii sive religiosarum, Ordinarii id ne permittant, nisi urgente necessitate, ac opportunis adhibitis cautelis.*

² Cf. Woywod, *A Practical Commentary on the Code of Canon Law* (6. ed., 2 vols., New York: Joseph F. Wagner, 1941), I, 701.

³ Cf. Payen, *De Matrimoniis in Missionibus ac Potissimum in Sinis, Tractatus et Casus* (3 vols., Zi-ka-wei: in typographia T'ou-sè-wè, 1928), III, 771.

⁴ Cf. Gasparri, *Tractatus Canonicus de Matrimonio* (ed. nova, 2 vols., Romae: Typis Polyglottis Vaticanis, 1932), n. 1065. Capello, *Tractatus Canonico-Moralis de Sacramentis* (3 vols. in 6, vol. III, *De Matrimonio*, 3. ed., Romae: Marietti, 1933), n. 728. Cf. S. C. Sac., *Romana et al., animadversio 4—AAS*, XVIII (1926), 391.

CONDITIONAL MATRIMONIAL CONSENT

Mary, a baptized Catholic, married Felix, also a baptized Catholic, in this parish a year ago. She comes to me now and tells me that she is worried about the validity of her marriage. She was told by him that he never drank and in giving her consent she made a condition in her mind that she would not be his wife if he was a drinker. He has not drunk intoxicants since the marriage, but she has found out since that he drank quite freely before meeting her. She does not wish to be free. She is willing to renew the consent but is fearful that Felix might be outraged by her lack of trust in him. Can the marriage be validated without the renewal of consent?

PISCATOR

If marriage consent is based on a past or present condition which is not verified at the time the consent is given, the marriage is invalid.¹ If, however, the condition was imposed entirely in the mind of the bride, external renewal of the consent is not needed, though it would be needed if the condition was external, even though occult. It suffices, when the condition is purely internal, that the person whose consent was thereby rendered defective, should renew the consent internally, provided that no doubt exists as to the continuance of the consent of the other spouse.²

Though there is probably no serious doubt about the validity of the consent given by the bride in the case as here proposed, the woman should be advised to renew her consent internally. If, in giving her consent, she had revealed in any way her intention of making such a condition, internal renewal of consent would not suffice to validate the marriage, supposing it to be invalid. If the externally manifested condition remained occult, i.e. incapable of proof in the external forum, it suffices that she alone renew her consent externally and secretly. If, however, the presence of the condition is publicly known, both parties must renew the consent

¹ Can. 1092, 4°. [*Conditio semel apposita et non revocata*.] Si de praeterito vel de praesenti matrimonium erit validum vel non, prout id quod conditioni subest, existit vel non.

² Can. 1136, § 1. Matrimonium irritum ob defectum consensus convalidatur, si pars quae non consenserat, iam consentiat, dummodo consensus ab altera parte praestitus perseveret.

§ 2. Si defectus consensus fuerit mere internus, satis est ut pars quae non consenserat, interius consentiat.

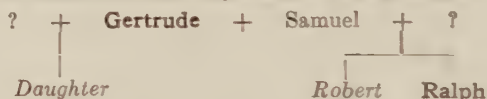
§ 3. Si fuerit etiam externus, necesse est consensum etiam exterius manifestare, vel forma iure praescripta, si defectus fuerit publicus, vel alio modo privato et secreto, si fuerit occultus.

according to the form required by the canons. Before obliging the woman to reveal to her spouse that she risked the invalidity of the marriage, further investigation should be made to ascertain with moral certainty whether the bride's attitude was really an effectual condition or mere wishful thinking. Psychologically analyzed, her disposition seems more likely to have been the latter. If any positive doubt remains, the woman should reveal the situation to her spouse and arrange for the renewal of consent by both parties in the presence of a priest and two witnesses.

It need hardly be added that there is no room for a *sanatio in radice* when the consent of one of the parties is lacking.

PUBLIC DECENCY AND DISPARITY OF CULT

Samuel married Gertrude on March 19, 1907, the man being a Catholic, the woman a Jewess, the marriage occurring before a Justice of the Peace. He was forty, she seventeen. He has two sons, both Catholic, Robert and Ralph, by a second marriage contracted in the church after a declaration of nullity. Now Ralph desires to marry Gertrude and Robert desires to marry the daughter of Gertrude by a second marriage. Gertrude's second husband is dead. Both women are Jewesses. *Periculum matrimonii civilis* and *nimia familiaritas* are the reasons for the dispensations being sought.



FOSSOR

As the form for the celebration of marriage required by the decree "*Ne temere*" did not become effective until Easter (April 19) 1908 and as the decree "*Tametsi*" of the Council of Trent¹ applied in only a few sections of the United States (those settled by the early French and Spanish pioneers),² it will be assumed that the marriage of Samuel and Gertrude was not invalid because of lack of the canonical form. It was, however, invalid because of the impediment of disparity of cult.

Nevertheless, even though invalid, it gives rise to the diriment impediment of public decency which affects the blood relatives of

¹ Sess. XXIV, *de ref. matrim.*, c. 1.

² Cf. Heneghan, "The Decree '*Tametsi*' in the United States"—THE JURIST, III (1943), 322, 323.

each party in the first and second degree of the direct line in regard to marriage with the other party previously involved in the invalid marriage.³ This impediment exists between Samuel's son Ralph and Gertrude but not between the children of Samuel and Gertrude. However, the impediment of disparity of cult is present in both instances.

The quinquennial faculties of local Ordinaries received from the Sacred Congregation of the Sacraments permit them to dispense from the impediment of public decency in the first degree whenever there is danger in delay and the marriage cannot be postponed until a dispensation be obtained from the Holy See. The reasons must be urgent and grave. Before July 1, 1946, local Ordinaries did not enjoy the faculty of dispensing from the impediment of disparity of cult when a Jew was involved, but now they do.⁴ The reasons must be grave and the *cautiones* must be given.

The reason based on *nimia familiaritas* is not sufficient for either dispensation, though it is a canonical reason. However, the danger of an attempted marriage, if it is a real danger in the given cases, does suffice. Moreover, it is strengthened by the subsidiary reason arising from the *nimia familiaritas*.

THE IMPEDIMENT OF CRIME

Henry, a Catholic of this parish, on May 4, 1906, married Sylvia, an unbaptized non-Catholic, after the death of her husband, also unbaptized. The parties had committed adultery but did not reveal this to the priest who married them, who consequently obtained a dispensation only from the impediment of disparity of cult. Henry says that thinking the husband already dead he had promised to marry Sylvia some time prior to the sin; at the time of the sin, however, he knew that the husband was still living. Three children were born to this marriage, Martha, Philip, and Jane, all reared Catholics. Philip desires to be adopted for the study of theology in September; Martha and Jane are planning to marry Frank and Herman, sons of Sylvia's uncle. There is danger of an attempt as the two men are not baptized and the girls are much infatuated. May I have the necessary dispensations?

CONSULENS

³ Can. 1078. Impedimentum publicae honestatis oritur ex matrimonio invalido, sive consummato sive non, et ex publico et notorio concubinato; et nuptias dirimit in primo et secundo gradu lineae rectae inter virum et consanguineas mulieris, ac vice versa.

⁴ Cf. THE JURIST, VI (1946), 536, 537.

In 1906 a dispensation granted by the Holy See in a case involving the impediment of disparity of cult carried with it a dispensation from any other co-existing relative impediments (exclusive, therefore, of impediments arising from vows or Holy Orders) from which the infidel was exempted (i.e. impediments deriving solely from ecclesiastical law) and from which the Church was wont to dispense (exclusive, therefore, of the impediments of affinity or consanguinity in the direct line and of consanguinity in the first degree of the collateral line). This is no longer the *praxis Curiae*.¹ However, in the present case, it is likely that the dispensation was granted by the local Ordinary in virtue of faculties received from the Holy See. Unless the local Ordinary had an intention of dispensing from co-existing impediments of this nature at the time when he issued the dispensation from the impediment of disparity of cult, the impediments would still affect the marriage and render it invalid. In this case, the question arises whether the impediment of crime co-existed with the impediment of disparity of cult. Since Henry did not know of the marriage of Sylvia at the time he promised to marry her, some authors would say that the impediment of crime did not arise through the subsequent adultery committed at a time when he did know she was married. Others say that the adultery implicitly renews the promise. The existence of the impediment is therefore doubtful and in virtue of canon 15 is without effect.²

From this it follows that Philip, the son of the marriage, is not illegitimate and needs no dispensation from that irregularity in order to be promoted to orders. It is assumed that he was born after the celebration of the marriage or at least after the death of Sylvia's first husband. In the former case, he would be legitimate; in the latter, legitimated. Indeed, even though the impediment of crime had existed, it is likely that the marriage was a putative

¹ This is apparent from a private response of the Sacred Congregation for the Propagation of the Faith issued to the Prefect Apostolic of Good Hope, which from the tenor of the question to which it was a reply would indicate that the practice was changed with the promulgation of the Code: cf. Bouscaren, *The Canon Law Digest*, I, 512, 513. The statement of the pre-Code practice was made in an Instruction of the Holy Office of September 16, 1824, sent to the Archbishop of Quebec; cf. *Pontes*, n. 866.

² Can. 15. *Leges, etiam irritantes et inhabilitantes, in dubio iuris non urgent.*

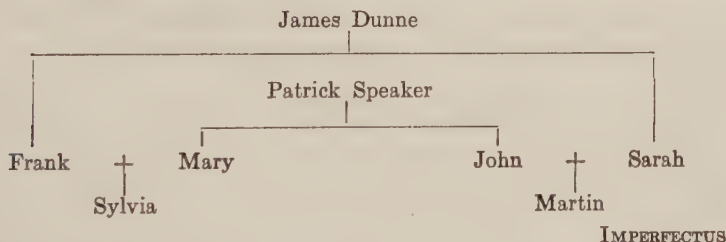
marriage; in that case, Philip would be legitimate or legitimated in the respective case.³

The danger of an attempted marriage suffices as a reason for a dispensation from the impediment of disparity of cult, though it should be fortified with other reasons. Needless to say, the *cautiones* must be given by the two unbaptized men. These two men are first cousins of Sylvia, the mother of the two women; they are thus related to the two women in the third degree touching the second. This is a minor impediment and the local Ordinary can dispense from this impediment in virtue of faculties from the Sacred Congregation of the Sacraments. The reason given suffices. Thus, in virtue of his quinquennial faculties, the local Ordinary can dispense from the impediments of disparity of cult and of consanguinity which this case involves. There is no impediment of affinity arising from the fact that two sisters are marrying two brothers.

UNDISCLOSED IMPEDIMENT OF CONSANGUINITY

A week ago I married Martin to Sylvia, with a dispensation from the impediment of consanguinity in the second degree of the collateral line. I now find that there was a double impediment in the same degree and line, while I was led to believe that there was only a single impediment. It happens that Martin is a convert, and I fear that a request for him to renew the consent might scandalize him to the point that he might revert.

The relationship is as follows:



The dispensation granted was valid in virtue of both canons 1049 and 1052.¹ The impediment that was not disclosed was in the same

³ Cf. cann. 1114-1117.

¹ Can. 1049, § 2. Qui habet indultum generale dispensandi super pluribus diversae speciei impedimentis, sive dirimentibus sive impediens, potest dispensare super iisdem impedimentis, etiam publicis, in uno eodemque casu occurrentibus.

degree as the one that was disclosed and a dispensation granted to cover the one impediment extends in virtue of canon 1052 to the one not disclosed.

CENSURE BY PROXY

Sarah, a baptized Catholic, attempted marriage with Harry, a baptized non-Catholic, before a non-Catholic minister in 1938, the baptized non-Catholic sister of Harry acting as proxy for Sarah. The latter has departed from Harry's home and wishes to be reconciled with the Church. Has Sarah incurred excommunication because of the attempted marriage before a non-Catholic minister?

REVELANS

Since a non-Catholic and a Catholic were involved in this attempted marriage, the Catholic incurs the penalty of excommunication reserved to the local Ordinary as prescribed in canon 2319, § 1, 1°. It is assumed that Sarah was the child of Catholic parents, or was at least reared a Catholic, with the consequence that she was bound to observe the canonical form in contracting marriage; in that event the attempted marriage was invalid. In that event, the validity of the appointment of Harry's sister as proxy for Sarah is, therefore, of little practical moment with regard to the validity of the marriage. It is nevertheless pertinent to observe that since all parties were baptized, the appointment of a proxy would need to conform to the prescription of canon 1089.¹ Even if the non-Catholic parties were not baptized, the provisions

Can. 1052. *Dispensatio ab impedimento consanguinitatis vel affinitatis, concessa in aliquo impedimenti gradu, valet, licet in petitione vel in concessione error circa gradum irrepserit, dummodo gradus existens sit inferior, aut licet reticendum fuerit aliud impedimentum eiusdem speciei in aequali vel inferiore gradu.*

¹ Can. 1089, § 1. *Firmis dioecesanis statutis desuper additis, ut matrimonium per procuratorem valide ineatur, requiritur mandatum speciale ad contrahendum cum certa persona, subscriptum a mandante vel a paroco aut Ordinario loci in quo mandatum fit, vel a sacerdote ab alterutro delegato, vel a duobus saltem testibus.*

§ 2. *Si mandans scribere nesciat, id in ipso mandato adnotetur et alius testis addatur qui scripturam ipse quoque subsignet; secus mandatum irritum est. . . .*

§ 4. *Ut matrimonium validum sit, procurator debet munere suo per se ipse fungi.*

of canon 1089 would govern Sarah, the Catholic party, in the appointment of the proxy. Indeed, if the Catholic form of marriage is required to be observed the appointment of the proxy of the unbaptized person would be controlled by the provisions of canon 1089.

One may well ask whether the appointment in this case was, in any event, the appointment of a proxy for marriage, since Sarah well knew, as an instructed Catholic should know, that the marriage would be invalid if attempted before a non-Catholic minister. The answer should be in the affirmative, since the proxy can give, in the name of his principal, true matrimonial consent, even though this consent is ineffectual in regard to the validity of the marriage which is prevented by the lack of form.

From this it seems established that the validly appointed proxy stands in the place of her principal even in regard to delinquency, in so far as the latter is contained in her commission from her principal. Indeed, even though the appointment were invalid as an appointment of a proxy for marriage, the principal would still be the *mandans* in the sense of canon 2209, § 3.² It might be alleged that if the appointment of the proxy is invalid, the delict contemplated by canon 2319, § 1, 1° is not committed, inasmuch as the proxy, in that event, is not capable of giving matrimonial consent in the name of her principal. But this failure is due to no lack of perversity on the part of the Catholic party. The proxy gives matrimonial consent in the name of her principal so far as the action depends upon her and upon her principal. It is the law that makes such matrimonial consent ineffectual because of the invalidity of the appointment of the proxy, just as it is the law that makes invalid the matrimonial consent even when given by the principal herself, if not given in the proper canonical form.

It seems justifiable, therefore, to conclude that Sarah has incurred the excommunication reserved to the local Ordinary by canon 2319, § 1, 1° because of the attempted marriage before a non-Catholic minister.

² Can. 2209, § 3. Non solum mandans qui est principalis delicti auctor, sed etiam qui ad delicti consummationem inducunt vel in hanc quoquo modo concurrunt, non minorem, ceteris paribus, imputabilitatem contrahunt, quam ipse delicti exsecutor, si delictum sine eorum opera commissum non fuisset.

MARRIAGE BEFORE A NON-CATHOLIC MINISTER

Barbara and Harold, both baptized Catholics bound by the form of marriage, attempted marriage before a non-Catholic minister in 1942. When Harold returned from the army, the parties found that their marriage was a mistake and agreed that they would not set up a home. Barbara wishes to be reconciled with the Church and desires to be absolved from the excommunication incurred by her attempted marriage.

CONCILIATOR

It is held by the authors that when marriage is attempted before a non-Catholic minister by two Catholics, the excommunication of canon 2319, § 1, 1° is not incurred.¹ However, under the legislation of the III Plenary Council of Baltimore, which, in this matter, retains its validity after the promulgation of the Code, the censure is incurred even when two Catholics are involved in the attempt. As in the Code, the censure is reserved to the local Ordinary. If the delict is committed in the diocese to which the parties belong, the absolution is reserved to their own local Ordinary.²

MARRIAGE AFTER CIVIL DIVORCE

Helen, a wealthy Catholic, separated from her Catholic husband whom she had validly married in 1940, because of the sin of adultery committed by him, was given permission by the local Ordinary to obtain a civil divorce in order to safeguard her property against claims upon it by the man in the case. Later, on a dare at a party, she went before a civil magistrate and attempted marriage with a Catholic man who had been her escort at the party. However, she says that both of them secretly agreed that they would not give true matrimonial consent, though all the persons at the party thought they were giving it. She has not made her Easter Duty since that time, though she has not lived with the man involved at any time. She wishes to be

¹ Cf. Coronata, *Institutiones Iuris Canonici*, IV (Taurini: Marietti, 1935), n. 1877.

² Conc. Plen. Balt. III, *Acta*, n. 127: Item decernimus Catholicos, qui coram ministro cujuscumque sectae acatholicae matrimonium contraxerint vel attentaverint, extra propriam dioecesim, in quolibet statu vel territorio sub ditione praesulum qui huic concilio adsunt vel adesse debent, excommunicationem incurrere Episcopo reservatam, a qua tamen quilibet dictorum Ordinariorum sive per se, sive per sacerdotem ad hoc delegatum absolvere poterit. Quod si in propria dioecesi ita deliquerint, statuimus eos ipso facto innodatos esse excommunicatione, quae, nisi absque fraude legis alium Episcopum adeant, eorum Ordinario reservatur.

reconciled with the Church and to be absolved from the excommunication if she has incurred it.

PACIFICATOR

This case reveals the danger inherent in the obtaining of a civil divorce by a Catholic even when the other party is guilty of adultery and even when there is property to protect. The petition for a civil divorce in other cases than those involving adultery seems not justified inasmuch as other causes warrant only a temporary separation.¹ Of course, the civil divorce *a vinculo* could never have more than the effect of a permanent separation, so far as the dissolution of a valid marriage is concerned.

The case involves more particularly, however, the question of the excommunication which the III Plenary Council of Baltimore enacted to punish those Catholics who attempt marriage after obtaining a civil divorce.² Infamy of law is incurred under the Code by those who commit this delict. Canon 2356, which imposes this penalty, also provides that if the parties refuse to separate they shall be punished by excommunication or personal interdict.³ The

¹ Cf. cann. 1129-1131; Kelly, "Separation and Divorce"—THE JURIST, VI (1946), 187. Kelly pleads for cooperation with legislators in the respective States with a view to obtaining, in regard to property rights, for separation *a mensa et toro* the same effects as civil statutes give to divorce *a vinculo*. Cf. the present number of THE JURIST for the amendment of the civil practice act of New York State, effective April 10, 1947. This amendment adds adultery as a reason for a separation from bed and board. Previously, separation from bed and board could be obtained in that State only for cruel and inhuman treatment, abandonment, and failure of the husband to provide for his wife. If a Catholic obtained a separation from bed and board for one of those reasons, the guilty party could then go to another State, establish a residence, and then obtain a divorce *a vinculo* on the basis of desertion or cruelty and thus render ineffectual the separation from bed and board obtained in New York State. Now, if the guilty party seeks to obtain a divorce *a vinculo* in another State for some reason less heinous than adultery, the innocent party may apprise the court of the foreign State of the adultery and the separation obtained from the courts of New York because of it. Cf. THE JURIST, VII (1947), 341, *infra*.

² Conc. Plen. Balt. III, *Acta*, n. 124. . . . poenam excommunicationis statuimus, Ordinario reservatam, *ipso facto* incurrendam ab eis, qui postquam divortium civile obtinuerint, matrimonium ausi fuerint attentare.

³ Can. 2356. Bigami, idest qui, obstante coniugali vinculo, aliud matrimonium, etsi tantum civile, ut aiunt, attentaverint, sunt ipso facto infames; et si, sprete Ordinarii monitione, in illicito contubernio persistent, pro diversa reatus gravitate excommunicentur vel personali interdicto plectantur.

parties undoubtedly gave serious scandal by leaving the impression that they were committing a grave sin, and this scandal they must repair by explaining that matrimonial consent was not given by them. Indeed, if they were brought to trial for the imposition of penalties by the ecclesiastical judge in the external forum, they would have the burden of proof in establishing that matrimonial consent was not exchanged. However, in the internal forum they did not incur the penalty inasmuch as there was no actual attempt at marriage.

SANATION OF MARRIAGE INVOLVING PROXY

In 1939 Grace, a baptized Catholic, appointed a non-Catholic woman as proxy for a marriage to be contracted with James, a baptized non-Catholic, before a civil magistrate. The proxy was made out in the proper form because it was the original intention of Grace that the marriage should take place in the presence of her pastor. The latter guided her by mail in the manner in which the proxy should be made out. However, when she discovered that James had changed his mind and refused to be married before a priest, she consented that her proxy should appear for her before a civil magistrate. She now wishes to have her state regularized through a *sanatio in radice*, inasmuch as James still refuses to appear before a priest. However, he says he will raise no objection to the baptism and the Catholic rearing of the child already born and of the children to be born to the union.

SANANS

The most recent faculties granted local Ordinaries in the United States enable them to grant a *sanatio in radice* in the case of a marriage attempted by a Catholic before a civil magistrate with a non-Catholic, baptized or unbaptized, provided that the consent of both parties continues to exist, when the non-Catholic party cannot be informed of the invalidity of the marriage without serious inconvenience for the Catholic party and when the non-Catholic party obstinately refuses to renew his consent. If the latter refuses to give explicit *cautiones*, moral certainty of their fulfillment with regard to children to be born is sufficient for the granting of the sanation. It is required for the granting of the sanation that neither party be actually insane; that the Catholic party at least be aware of the invalidity of the marriage; that the latter should petition for its sanation and should explicitly promise that she will take all steps necessary for the baptism and Catholic education of all children already born to the marriage as well as of those to be

born; that no pact exists between the parties providing for the non-Catholic education of the children; and that no diriment impediment is involved over which the local Ordinary has no faculties.¹ Moreover, this faculty cannot be subdelegated.

In this case, the question arises whether the consent expressed by the duly appointed proxy is sufficient foundation for the granting of the sanation. One might be inclined to say that the law would not recognize the appointment of a proxy for the precise purpose of violating the law and that the appointment as proxy was invalidly exercised when the proxy gave her principal's matrimonial consent before a civil magistrate. There can be no question, of course, of the unlawfulness of the act. But as regards the validity of the act, it seems that the Code in prescribing the procedure for the appointment of a proxy is concerned with the consent and not with the form of marriage. In other words, a proxy duly appointed is capable of giving matrimonial consent, even though it be invalidly given for some reason other than a defect in the appointment of the proxy. In this case, it is the lack of form that prevents the proxy from giving effectual matrimonial consent, but not from giving matrimonial consent adequate to supply the foundation for a sanation.

THE WEARING OF A BEARD BY CLERICS

My physician tells me that if I wore a beard I would diminish in large measure my susceptibility to laryngitis. I think my wearing it would not cause wonderment among my parishioners. We have had priests from religious orders who wore beards giving missions in this parish and no wonderment arose from their presence. Indeed, I think their prestige was enhanced by the fact that they wore beards. Is it possible for me to obtain permission to wear a beard for the improvement of my health?

AFFLICTUS

The II Plenary Council of Baltimore commanded that all clerics should follow the custom of the Roman Church in the matter of the wearing of the beard and referred to the prohibition against it issued by Pius IX. The prohibition to which reference was made was actually contained in a letter of the Apostolic Nuncio to Bavaria sent to the Bishop of Freising-Munich in 1863.¹

¹ Cf. *THE JURIST*, VI (1946), 537, 538.

¹ Conc. Plen. Balt. II, *Acta*, n. 151.

On January 11, 1920, the Sacred Congregation of the Council issued a response in regard to this matter. The question came from the Diocese of Breslau. As a preliminary statement, the Sacred Congregation noted that in Germany clerics were forbidden to wear beards, partly because of the laws of a provincial council and partly in virtue of a centenary custom. The question proposed was whether the Code gives to all secular priests the right to wear beards and whether local Ordinaries can continue in effect for their respective dioceses the prohibitions against it which have hitherto been in effect. Before answering the question, the Sacred Congregation made the following observations.

Beards were never forbidden to clerics by any general law of the Church. The prohibition in the general law referred to fastidious care of the beard.² The Code neither forbids the wearing of a beard nor confers the right of wearing one. Hence the particular law existing in Germany is not revoked by canon 6, 1° or by canon 6, 6°.

It was therefore resolved that local Ordinaries can continue in effect the prohibitions against the wearing of the beard.

The basis of the prohibition in the United States is clearly the decree of the II Plenary Council of Baltimore. Under canons 82 and 291, § 2, the local Ordinary can dispense in particular cases and for an adequate reason from the laws of a plenary council. Therefore it is to be concluded that it is within the power of the local Ordinary to grant a cleric of his diocese the permission to wear a beard.

EXAMINATION OF APPOINTEE TO A PARISH

I have just taken the last of the five annual junior clergy examinations and now I have been summoned to the Chancery to submit to another examination as a prerequisite to my appointment to a parish of removable tenure. Doesn't this seem excessive?

TENTATUS

The junior clergy examinations, for the diocesan clergy of three-year duration under the Code¹ but of five-year duration under the

² Cf. c. 7, *de vita et honestate clericorum*, III, 9.

¹ Can. 130, § 1.

law of the III Plenary Council of Baltimore,² do not suffice as the test required in canon 459, § 3, 3°³ for the appointment of a cleric to a vacant parish.

Before June 24, 1931, the general view was that the conferring of irremovable parishes in the United States was governed by canon 459, § 4, which indicates that in regions in which parishes are conferred through a general or special concursus, this plan should be followed until the Holy See had determined otherwise. However, there could have been raised some question as to whether the concursus in its strict sense did exist in this country. The III Plenary Council of Baltimore admitted that it was accommodating to the necessities of this country the method prescribed by Pope Benedict XIV.⁴ On the other hand, the Council stressed the point that it was retaining that method substantially, and there is constant reference in the chapter on the concursus to the constitution of Benedict XIV. It is noteworthy, too, that the Council prescribed the concursus only for appointments to parishes of irremovable tenure.

On June 24, 1931, however, the requirements of the III Plenary Council of Baltimore were abrogated by a private decree of the Sacred Congregation of the Council.⁵ Not only was the method of the concursus abrogated but also the conditions prerequisite: viz., that the candidate had creditably exercised the sacred ministry in the diocese for at least ten years during which he had shown himself a capable administrator. The decree of the Sacred Congregation, in abrogating these provisions, provided that thenceforth appointments to all parishes, whether of removable or of irremovable tenure, should be conferred in accordance with canon 459, § 3.

However, the Code Commission replied in 1920 that the junior clergy examinations could not take the place of that prescribed in canon 459 § 3, 3°, though the results achieved in them should be

² Conc. Plen. Balt. III, *Acta*, n. 187.

³ Can. 459, § 3, 3°. [Quare loci Ordinarius:] Clericum examini super doctrina coram se et examinadoribus synodalibus subiiciat; a quo, de consensu eorundem examinerum potest dispensare, si agatur de sacerdote doctrinae theologicae laude commendato.

⁴ Benedict XIV, const. "*Cum illud*", 14 dec. 1742—*Fontes*, n. 333; cf. III Conc. Plen. Balt., *Acta*, n. 40.

⁵ Bouscaren, *The Canon Law Digest*, I, 249.

weighed, as canon 130, § 2, prescribes, together with the results of the special examination of canon 459, § 3, 3°, in the conferring of the parish.⁶

It is possible, of course, that the junior clergy examination might also serve as a basis for dispensation from the examination, provided the consent of the synodal examiners intervenes.

EXAMINATION OF A TRANSFERRED PASTOR

I think I am not compelled to take an examination before going to my new charge in St. Helen's Parish. I was perfectly contented in my charge as pastor at St. Ambrose's, and did not request a transfer.

I should find it inconvenient to travel thirty miles to the Chancery on the day assigned for the profession of faith and the anti-modernistic oath, as I am holding a bazaar on that day. I have a young man in the parish, now a lawyer, who studied for the priesthood through second philosophy. Would it be possible to delegate him to take the profession and the oath?

EXEMPTUS

The Code Commission replied in 1920 that when a pastor is transferred from one parish to another at the suggestion or the instance of the Ordinary, the pastor is not required to submit to the examination required by canon 459, § 3, 3°. ¹ The exemption from the examination is enjoyed even when the pastor is administratively removed from his parish for the reasons set forth in canon 2147. ²

⁶ Code Commission, 24 nov. 1920, 6—AAS, XII (1920), 574; Bouscaren, *The Canon Law Digest*, I, 119.

¹ As to the local Ordinary's right to transfer a willing or even an unwilling pastor cf. cann. 2162-2167.

Can. 2162. Si bonum animarum postulet ut parochus a sua, quam utiliter regit, ad aliam paroeciam transferatur, Ordinarius eidem translationem proponat ac suadeat ut eidem pro Dei atque animarum amore consentiat.

Can. 2163, § 1. Parochum inamovibilem Ordinarius invitum transferre nequit, nisi speciales facultates a Sede Apostolica obtinuerit.

§ 2. Parochus vero amovibilis, si paroecia *ad quam* non sit ordinis nimio inferioris, etiam invitus transferri potest, servatis tamen praescriptis canonum qui sequuntur.

² Code Commission, 24 nov. 1920, nn. 1-3—AAS, XII (1920), 574; Bouscaren, *The Canon Law Digest*, I, 248.

The profession of faith is required even though the transfer is made at the instance of the local Ordinary,³ and by analogy, the oath against modernism as required by the *motu proprio* of Pius X.⁴

A layman cannot be delegated to receive this profession or this oath and a proxy cannot be employed in either case.⁵

RELIGIOUS AND CONFERENCE ATTENDANCE

The assistants attached to a parish here refuse to attend the conference in my deanery, alleging that they attend a conference every month in their own religious house. Should I take the matter to the local Ordinary to enlist his authority in requiring their attendance?

CORRECTOR

Canon 131, § 1, requires that clerical conferences be held *saepius* in anno in the episcopal city and in every deanery on days assigned by the local Ordinary. The III Plenary Council of Baltimore also requires that these conferences be held at least four times a year in cities and twice a year in rural districts.¹ To hold them only twice a year even in country districts does not seem sufficient to comply with the provisions of canon 131, § 1. Canon 591 requires that these conferences be held at least once a month in at least the formal houses of clerical communities.

With regard to the required attendance of religious at the diocesan clerical conferences, canon 131, § 3, provides that all those who have the care of souls must attend them, even if they attend conferences in their own religious houses; if conferences are not held in the religious houses, even those religious who merely possess the faculties of the diocese are obliged to attend the diocesan conferences. The latter exemption abrogates in part the provision of

³ Can. 1406, § 1, 7°. [Obligatione emittendi professionem fidei, secundum formulam a Sede Apostolica probatam, tenentur:] Coram loci Ordinario eiusus delegato, . . . parochi et ii quibus provisum fuit de beneficiis quibusvis, etiam manualibus, curam animarum habentibus; . . .

Can. 1406, § 2. Qui, priore dimisso, aliud officium vel beneficium aut dignitatem etiam eiusdem speciei consequuntur, rursus debent fidei professionem emitte ad normam huius canonis.

⁴ Pius X, *motu propr.* "*Sacrorum antistitum*", 1 Sept. 1910—*Fontes*, n. 689.

⁵ Can. 1407. Obligationi fidei professionem emittendi non satisfacit qui eam per procuratorem vel coram laico emittit.

¹ Conc. Plen. Balt. III, *Acta*, n. 192. Cf. Conc. Plen. Balt. II, *Acta*, n. 68.

the III Plenary Council of Baltimore which required absolutely the attendance at the diocesan conferences of all religious who enjoyed the diocesan faculties for hearing confessions.²

Assistants who are appointed in accordance with canon 476, § 6, for the entire parochial ministry are to be regarded as having the care of souls and as obliged to attend diocesan conferences even if they attend conferences in their own houses.³

They are not compelled to take the diocesan junior clergy examinations. If these examinations are neglected in the religious community, in spite of the provision of canon 590 which requires religious to take them for five years after ordination to the priesthood, the most that the local Ordinary can do is report the matter to the Sacred Congregation of Religious.⁴

PERMISSION FOR A PICNIC

A Newman Club of which I am moderator had a picnic last Memorial Day. Several cases of beer ministered to the delight of those in attendance. I am told that the local Ordinary is displeased not only because of the presence of beer at the picnic but because his permission was not obtained for the holding of it. Was I under an obligation to obtain such a permission? Should I have used my influence to keep beer away from the picnic?

MODERATOR

The II Plenary Council of Baltimore had already stated that there was no excuse for the practice of raising money for church purposes by those means which afford a direct occasion of sin, which are the frequent occasion of public scandal, and which expose the Church to ridicule and disgrace. Of this nature, the Council said, those affairs seem sometimes to be which are commonly called picnics or excursions or the like. Therefore, it ordained that local Ordinaries were to be vigilant to prevent those affairs from becoming seminaries of sin ("*peccatorum seminaria*") or even to forbid them entirely.¹

² Conc. Plen. Balt. III, *Acta*, n. 191.

³ Code Commission, 12 febr. 1935—AAS, XXVII (1935), 92; Bouscaren, *The Canon Law Digest*, II, 53.

⁴ Code Commission, 14 iul. 1922, II—AAS, XIV (1922), 526; Bouscaren, *The Canon Law Digest*, I, 119, 120.

¹ Conc. Plen. Balt. II, *Acta*, n. 396.

The III Plenary Council of Baltimore referred to the action of the preceding Council, indicating that its own decree is meant to be supplemental and to offer a means of carrying out the more general provisions of the former Council's decree. It directly forbids that these affairs be held at night, on Sundays, on feast days, on holidays. It also forbids that liquor, wine or beer be used in connection with them. In every case, even when the prohibited circumstances are not present, the permission of the bishop is required. Moreover, the bishop is forbidden to grant the permission unless he has made a diligent examination and has reached moral certainty that the case involves no proximate occasion of sin or scandal.²

On the other hand, it would seem that the Newman Club's private picnic should not fall into the category of those picnics contemplated by the legislation of the Councils of Baltimore. The Councils had competence to regulate the private picnic of even the Newman Club, at least by imposing a prohibition on the individual members. So, too, the local Ordinary has competence to make such regulations affecting the Club at least through its members. However, the actual legislation of the Councils seems to be restricted in its prohibition to parishes and parish societies. On the other hand, diocesan statutes might extend the restrictions of the conciliar legislation to clubs and societies composed of Catholics. In any event, it would not be wise in the given case for the Newman Club to hold similar picnics in the future without the knowledge of the local Ordinary or to serve beer at those which, with the knowledge of the local Ordinary, they promote.

VICAR ECONOME'S INITIATIVE

I herewith defend my action as the newly appointed pastor here in suppressing the parish branch of the Confraternity of Christian Doctrine which was established by the vicar econome who preceded me. He exceeded his authority as vicar econome in establishing it.

TURBATUS

Canon 711, § 2, requires the establishment of the Confraternity of the Most Blessed Sacrament and the Confraternity of Christian Doctrine in every parish. However, canon 473, § 1, forbids a vicar

² Conc. Plen. Balt. III, *Acta*, nn. 290, 291.

econome to inaugurate any practice in the parish that may affect adversely the rights of the incoming pastor.¹

Surely it cannot be said that the action of the vicar econome in establishing the Confraternity of Christian Doctrine prejudiced the rights of the incoming pastor when the latter is actually obliged under the Code to establish it. If local circumstances should *per accidens* cause the action of the vicar econome to injure the pastor's rights, the obligation of showing such injury rests on the pastor. The presumption is surely founded in law that no such injury exists. It may not have been wise for the vicar econome to have established the Confraternity during his short tenure of office. Indeed, his misguided zeal might render his judgment somewhat suspect in the eyes of his superiors. It might, indeed, afford the incoming pastor a source of prestige to permit him to comply with the law himself in establishing the Confraternity. But to deprive the pastor of such an opportunity is to offend against no right of his protected by the law.

Above all, the incoming pastor is not justified in suppressing the Confraternity. His action smacks of resentment and cannot be anything but a source of criticism on the part of the faithful and of censure on the part of his superiors.

HOLY NAME SOCIETY COMMUNION SUNDAY

Is it contrary to any ruling of the Holy See to announce on Sunday morning that the members of the Holy Name Society are cordially invited to receive Holy Communion on the following Sunday morning with special mention of the fact that the members are left free to attend or not?

ZELATOR

This question has been proposed, it would seem, by one who has vaguely heard of the instruction of the Sacred Congregation of the Sacraments issued December 8, 1938.¹ The purpose of this instruction was to prevent the possible occasions for sacrilegious

¹ Can. 473, § 1. Vicarius oeconomicus iisdem iuribus gaudet iisdemque officiis adstringitur, ac parochus, in iis quae animarum curam spectant; nihil tamen ipsi agere in paroecia licet, quod praeiudicium afferre possit iuribus parochi aut beneficii paroecialis.

¹ S. C. Sacr., instr. 8 dec. 1938—Bouscaren, *The Canon Law Digest*, II, 208-215.

reception of Holy Communion resulting from even mild duress practised on young people in Catholic schools or on religious living in community.

In regard to the danger arising from "general communion days" the words of the instruction are these: "In communities of boys and girls there should never be an announcement of a *general Communion* with special solemnity, and even outside communities, the very name "general Communion" should either not be used at all or its meaning should be carefully explained; namely, that all are invited to the Holy Table, but no one is obliged to approach, on the contrary each individual is entirely free to abstain from it."

It would seem that the terms of the instruction do not extend to general communion days for adults, though even adults are to be informed by preachers and spiritual directors when they publicly or privately exhort the faithful to frequent Communion that frequent Communion is not obligatory.

The announcement of the Communion Sunday for the Holy Name Society as noted in the proposed question does not offend against this instruction.

ACCEPTANCE OF INDULT OF SECULARIZATION

I acknowledge the receipt of the execution of the dispensation from simple perpetual vows granted by the Sacred Congregation of Religious in favor of Sister Boniface of the community here where I am chaplain. When Sister was asked to sign the acceptance, she refused and said she had changed her mind in the interval, indeed within a week after she had asked for the dispensation.

INTERVENTOR

As early as 1922 the Sacred Congregation of Religious replied that a religious who has obtained an indult of secularization or a dispensation from simple vows can refuse to accept it when he receives notice of it from the local Superior, although the General Superior had already issued in writing the decree executing the rescript. If the superiors had grave reasons against permitting the religious to remain in the community, they were advised to communicate them to the Sacred Congregation.¹

This response applies analogously to the case proposed herewith.

¹ S. C. Rel., resp. 1 aug. 1922—AAS, XIV (1922), 501; Bouscaren, *The Canon Law Digest*, I, 326.

APPOINTMENT OF EX-RELIGIOUS TO CURIAL OFFICE

I protest the objection raised against my serving as Defensor Vinculi. I was indeed secularized after perpetual profession while I was a deacon; but that occurred before the disqualification that follows from the law of the Code. Since the purpose of the law is to prevent religious from seeking secularization, the purpose did not touch me, as I was a priest incardinated in this Diocese when the Code was promulgated.

PROVOCATUS

Canon 642, § 1, forbids religious in sacred orders who have returned to the world to be promoted to any office in the diocesan curia. This prohibition is derived almost word for word from the decree of the Sacred Congregation of Religious of June 15, 1909.¹ This decree gave as the reason that it was unbecoming that religious should receive promotion and honor after they had left the community perhaps with the precise intent of obtaining such distinction.

Obviously this prohibition antedates the Code; but to make the extent of the prohibition even clearer, the Code Commission replied in 1920 that the prohibitions of canon 642 affect those who had left the religious life prior to the promulgation of the Code.²

However, canon 642 makes the conferring of these offices on ex-religious only unlawful, not invalid. Since the office of Defensor Vinculi belongs to the diocesan curia, it is apparent that the ex-religious involved in the present case cannot lawfully be its incumbent.

 TRANSFER OF MASS STIPENDS

A diocesan statute forbids priests of the diocese to send manual Mass stipends outside the diocese without the permission of the local Ordinary. Isn't this statute contrary to the liberty granted in the Code?

CENSOR

It is a principle of the general law that the local Ordinary cannot prohibit what is expressly and clearly permitted by the general law, unless the latter itself confers on him this power.¹ Canon 838

¹ *Fontes*, n. 4393.

² Code Commission, 24 nov. 1920—AAS, XII (1920), 575; Bouscaren, *The Canon Law Digest*, I, 327.

¹ Cf. Wernz, *Ius Decretalium* (6 vols. Romae et Prati, 1898-1905), II, n. 756.

clearly gives priests the right to transfer Mass stipends even outside the diocese without the permission of the Ordinary of the sender. The Sacred Congregation of the Council has stated that this freedom was deliberately intended, because the prudent transfer of Mass stipends is a form of charity, constituting a source of assistance to poor priests and churches.² However, this freedom extends only to those stipends over which priests have control, not to founded Masses or to Mass stipends *ad instar manualium*. The Sacred Congregation of the Council, in its solution of the case proposed to it, denied the power of restriction to the laws of a provincial council.

Of course the local Ordinary has authority to correct abuses in individual cases. Moreover, under canon 843, § 2, he has the right and the duty to inspect at least once a year the books of rectors of churches and other pious places under the administration of the diocesan clergy to determine whether Mass intentions are properly fulfilled.

TIME FOR MARRIAGE

A diocesan statute forbids marriages on Saturdays or in the evenings. Is this statute contrary to the liberty granted in canon 1108, § 1.

SCRUTATOR

Extrinsic authority justifies the prohibition forbidding evening weddings. Gasparri says a statute of this kind is sound, stating that the danger of inebriation on the part of the contracting parties is a good reason for its enactment and adding that if evening weddings became the rule, the laudable and ancient custom of blessing the marriage during Mass would disappear altogether.¹

On the other hand, the weight of opinion would regard as contrary to canon 1108, § 1, a statute forbidding marriage on a given day. Vlaming does not agree with this view, since he holds that § 1 of canon 1108 must be understood as placed in opposition to

²S. C. Conc., resol. 19 febr. 1921—AAS, XIII (1921), 228; Bouscaren, *The Canon Law Digest*, I, 399.

¹Gasparri, *Tractatus Canonice de Matrimonio* (ed. nova), n. 1062; Cappello calls this opinion most probable—cf. *De Matrimonio*, n. 726.

§ 2 of the same canon and that it means that marriage can be contracted even during those times of the year in which the solemn blessing is forbidden by § 2.² Gasparri concedes that a reasonable cause would easily excuse from such a law.³ Cappello⁴ and Wernz-Vidal⁵ are the leading authors who regard such a statute as contrary to canon 1108, § 1, and as therefore invalid.

GOVERNMENT PAYMENTS TO INDIVIDUAL RELIGIOUS

A priest of our community receives an allowance from the government for injuries sustained while he was chaplain with the armed forces. Since his vows are simple vows, he argues that this allowance should be given to him to be added to the capital sum of which he is owner, to pass under his will to his beneficiaries at his death. Can his position in this respect be maintained?

BURSA

The Sacred Congregation of Religious issued a response on March 16, 1922, which touches this precise case.¹ Responses were given at that time to eight questions, the basis of all resting on the fact that the religious was bound by vows during his service. If a religious, even one bound by only simple vows, was under vows during his term of military service, his salary belongs to the institute; so does any annual allowance for injuries; so does any bonus paid him in contemplation of his military service. In the case of those who were not under vows during their military service, the allowance is to be turned over to the institute or the quasi-religious society as long as the person or quasi-religious involved belongs to the institute or the society.

² Vlaming, *Praelectiones Iuris Matrimonii* (3. ed., 2. vols., Bussum in Hollandia, 1919-1921), n. 613.

³ *Op. cit.*, n. 1063.

⁴ *Loc. cit.*

⁵ *Ius Canonicum*, 7 vols. in 9, Vol. V, *Ius Matrimoniale* (Romae, 1925), n. 575, note 19.

¹ S. C. Rel., resp. 16 mart. 1922—AAS, XIV (1922), 196; Bouscaren, *The Canon Law Digest*, I, 311, 312.

INSANITY OF RELIGIOUS IN TEMPORARY VOWS

A religious of our community, professed of temporary vows, has lost his mind. Since he is incapable of making perpetual profession, is he to be sent back to his relatives at the expiration of the period of his temporary profession?

The Sacred Congregation of Religious discussed this question at some length, according to its own statement, and issued a solution on February 5, 1925.¹ Its decision was that the religious is to be kept in the community and that his juridical position is that which he enjoyed at the time he lost his mind. It held that the religious institute has toward him the same obligations which it had at that time.

TONSURE IMPEDED BY FATHER'S HERESY

A young man of my parish is the son of a baptized Protestant father who is dead though his grandparents on his father's side are still living. Is he under the impediment of canon 987, 1° with regard to the reception of tonsure?

SPONSOR

The pre-Code law affecting the son of a heretic with regard to the reception of tonsure was stated in a decree of the Holy Office of December 4, 1890.¹ According to that decree, the candidate was irregular if his grandparents on his father's side were still heretics. However, the Code Commission has interpreted canon 987, 1° to exclude the grandparents on the father's side, as well as on the mother's side.²

However, if the Protestant father were living, the impediment would exist, even though the candidate's mother were a Catholic and even though his parents had been married with a dispensation after his father had given the *cautiones*.³

¹ S. C. Rel., dubium 5 febr. 1925—AAS, XVII (1925), 107; Bouscaren, *The Canon Law Digest*, I, 309, 310.

¹ *Fontes*, n. 1129.

² Code Commission, 14 iul. 1922, IX—AAS, XIV (1922), 528; Bouscaren, *The Canon Law Digest*, I, 487.

³ Code Commission, 16 oct. 1919, n. 13—AAS, XI (1919), 478; Bouscaren, *The Canon Law Digest*, I, 487.

The fact that the Protestant father is dead was irrelevant under the pre-Code law, because the decree of the Holy Office to which reference has just been made inserted explicitly the words "vel mortui sunt [in haeresi]" to indicate the case in which the irregularity existed. These words do not appear in the text which describes the impediment of canon 987, 1°. For that reason, leading canonists, among them Vermeersch-Creusen⁴, Wernz-Vidal⁵, and Cappello,⁶ hold that there is no impediment even though the heretical parent died without conversion to the Faith. There exists, therefore, a *dubium iuris* in this respect and in virtue of canon 15, the impediment should be held as not existing when the Protestant father is dead.⁷

LOAN TO PARISHIONER

A member of my parish was in sore straits and needed five hundred dollars. I knew that the Code does not allow clerics to endorse notes, so I lent him the money out of my own bank account. Though he has recently won a large lottery prize, he evades me. Have I any redress?

CREDITOR

Canon 137 forbids clerics to guarantee the obligations of others without consulting the local Ordinary and among acts constituting such a guaranty is the endorsing of a note. The II Plenary Council of Baltimore forbids the suing even of laymen by the clergy in civil tribunals unless the case cannot be settled otherwise.¹ Surely to ascertain whether the suit can be entered without the scandal which canon 137 aimed to prevent, the cleric who is creditor in this case should have the advice of his local Ordinary. Perhaps all things considered, he should write the debt off to experience. Persons who want five hundred dollars from a priest usually do not contemplate repayment. If their credit was good, they would not need approach a priest. Five hundred dollars is not five dollars!

⁴ *Epitome Iuris Canonici*, II (5 ed., Mechliniae-Romae: H. Dessain, 1934), n. 259.

⁵ *Ius Canonicum* (7 vols. in 9, Romae, 1923-1928), IV, pars I, n. 256.

⁶ *De Sacra Ordinatione* (Romae: Marietti, 1932), n. 519.

⁷ Cf. Vogelpohl, *The Simple Impediments to Holy Orders*, The Catholic University of America Canon Law Studies, n. 224 (Washington, D. C.: The Catholic University of America Press, 1945), pp. 138-141.

¹ Conc. Plen. Balt. II, *Acta*, nn. 155, 156.

LOAN TO ONE'S PARISH

I had just made the last payment on the parish debt when a bill for new vestments arrived, allowing a rather liberal discount if the bill was paid within thirty days. Knowing that the income of the parish would not be adequate, considering current expenses, to allow me to pay the bill within thirty days, I paid it out of my own funds, expecting to repay myself when there were sufficient funds in the parish treasury. Now one of my confreres doubts whether I can collect.

LIBERALIS

This unbusinesslike act would be appropriate at a child's lemonade stand, but certainly not in the administration of a parish. If the discount exceeded the interest which a bank would demand for a loan, a loan was in order. In that case, a note would be given the bank for sixty or ninety days. The permission of the local Ordinary would be needed.¹ However, if the loan did not exceed three hundred and thirty-eight dollars (at the devalued rate of the dollar), the local Ordinary would need only to hear his council of administration before granting the permission.

This procedure is necessary even if the pastor becomes the creditor of the parish by advancing money to it from his own funds, if he intends to collect the principal. Moreover, the legislation of the Councils of Baltimore forbids the lending of the pastor's money to the parish without the written permission of the local Ordinary. When that permission is given it requires further a note signed by the church committeemen and proper record of the debt in the books of the parish.²

In the present case, if the pastor involved can prove to the satisfaction of the local Ordinary that he did in fact advance the money to the parish, it is not likely that his equitable claim against the parish will be defeated.

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¹ Cann. 1532, 1533.

² Conc. Plen. Balt. II, *Acta*, n. 193; Conc. Plen. Balt. III, *Acta*, n. 281.

Decrees and Decisions

CANONICAL

CONSTITUTIO APOSTOLICA

DE STATIBUS CANONICIS INSTITUTISQUE SAECULARIBUS CHRISTIANAE
PERFECTIONIS ADQUIRENDAE

PIUS EPISCOPUS

SERVUS SERVORUM DEI

AD PERPETUAM REI MEMORIAM

Provida Mater Ecclesia, quanto studio maternoque affectu contenderit, ut suae praedilectionis filios,¹ qui totam vitam Christo Domino mancipantes, Ipsum per viam consiliorum libere et ardue sequuntur, tam coelesti proposito et angelica vocatione² dignos iugiter redderet ac eorum vivendi rationem sapienter ordinaret, frequentissima Pontificum, Conciliorum, Patrum documenta et monumenta testantur, atque integer historiae ecclesiasticae cursus omnisque canonicae disciplinae ratio, ad nostra usque tempora, luculenter demonstrat.

Profecto, inde a primis rei christianae incunabulis, Christi³ et Apostolorum doctrinam atque exempla ad perfectionem allicientia,⁴ Ecclesia reapse magisterio illustrare satagit, secure docendo qua ratione vita perfectioni dicata ducenda esset apteque componenda. Opera autem ministerioque suo ita impense plenam Christo dedi-

¹ Pius XI, *Nuncium radiophonicum*, 12 febr. 1931 (ad religiosos). Cfr. A.A.S. XXIII (1931), p. 67.

² Cfr. Tertullianus, *Ad uxorem*, lib. I, c. IV (ML. 1, 1281); Ambrosius, *De virginibus*, I, 3, 11 (ML. 16, 202); Eucherius Lugdun., *Exhortatio ad Monachos*, 1 (ML. 182, 641), id. *Apologia ad Guillelmum*, c. X (ML. 182, 912).

³ *Mt.* XVI, 24; XIX, 10-12, 16-21; *Mc.* X, 17-21, 23-30; *Lc.* XVIII, 18-22, 24-29; XX, 34-36.

⁴ *I Cor.* VII, 25-35, 37-38, 40; *Mt.* XIX, 27; *Mc.* X, 28; *Lc.* XVIII, 28; *Act.* XXI, 8-9; *Apoc.* XIV, 4-5.

tionem et consecrationem fovit et propagavit, ut primis temporibus communitates christianae consiliis evangelicis bonam terram semini paratam optimosque fructus secure promittentem ultro offerebant,⁵ pauloque post, ut ex Patribus Apostolicis et antiquioribus ecclesiasticis scriptoribus facile comprobari potest,⁶ in diversis ecclesiis vitae perfectionis professio adeo iam floruerit, ut ipsius sectatores, veluti ordinem classemque socialem variis nominibus—ascetarum, continentium, virginum, aliisque—, clare recognitam et multis probatam atque honoratam,⁷ in ecclesiasticae societatis sinu inciperent constituere.

Saeculorum decursu, Ecclesia Christo Sponso fidelis sibi que semper constans, sub Spiritus Sancti ductu, continuato certoque incessu, usque ad conditum hodiernum Canonici Iuris Codicem status perfectionis disciplinam pedetemptim evoluit. In illos materne inclinata, qui animo volenti diversis formis externe ac publice vitae perfectionem profitebantur, eisdem omnimodis in tam sancti proposito, duplici respectu favere numquam destitit. Singularem in primis, semper tamen coram Ecclesia et publica ratione factam, perfectionis professionem—ut priscam illam ac venerandam, quae liturgice peragebatur, virginum benedictionem et consecrationem⁸

⁵ Lc. VIII, 15; Act. IV, 32, 34-35; I Cor. VII, 25-35, 37-38, 40; Eusebius, *Historia ecclesiastica*, III, 39 (MG. 20, 297).

⁶ Ignatius, *Ad Polycarp.*, 7 (MG. 5, 724); Polycarpus, *Ad Philippen.*, V, 3 (MG. 5, 1009); Iustinus Philosophus, *Apologia I pro christianis* (MG. 6, 349); Clemens Alexandrinus, *Stromata* (MG. 8, 224); Hyppolytus, *In Proverb.* (MG. 10, 628); id., *De Virgine Corinthiaca* (MG. 10, 871-874); Origenes, *In Num. hom.* 2, 1 (MG. 12, 590); Methodius, *Convivium decem virginum* (MG. 18, 27-220); Tertullianus, *Ad uxorem*, lib. I, c. VII-VIII (ML. 1, 1286-1287); id., *De resurrectione carnis*, c. VIII (ML. 2, 806); Cyprianus, *Epistola XXXVI* (ML. 4, 327); id., *Epist. LXII*, 11 (ML. 4, 366); id., *Testimon. adv. judeos*, lib. III, c. LXXIV (ML. 4, 771); Ambrosius, *De viduis*, II, 9 et sqq. (ML. 16, 250-251); Cassianus, *De tribus generibus monachorum*, V (ML. 49, 1094); Athenagoras, *Legatio pro christianis* (MG. 6, 965).

⁷ Act. XXI, 8-10; cfr. Ignatius Antioch., *Ad Smyrn.* XIII (MG. 5, 717); id., *Ad Polyc.* V (MG. 5, 723); Tertullianus, *De virginibus velandis* (ML. 2, 935 sqq.); id., *De exhortatione castitatis*, c. VII (ML. 2, 922); Cyprianus, *De habitu virginum*, II (ML. 4, 443); Hieronimus, *Epistola LVIII*, 4-6 (ML. 22, 582, 583); Augustinus, *Sermo CCXIV* (ML. 38, 1070); id., *Contra Faustum Manichaeum*, lib. V, c. IX (ML. 42, 226).

⁸ Cfr. Optatus, *De schismate donatistarum*, lib. VI (ML. 11, 1071 sqq.); Pontificale Romanum, II: *De benedictione et consecratione Virginum*.

—Ecclesia ipsa non solum recepit ac recognovit, sed sapienter sanxit strenueque defendit, plures etiam eidem attribuens canonicos effectus. Praecipuus tamen Ecclesiae favor diligentiorque cura, erga illam perfectionis plenam professionem strictius publicam, a primis temporibus, post pacem constantinianam adeptam, iure meritoque conversa sunt atque exercita, quae in societatibus collegiisque emittebatur ex ipsius venia, approbatione, iussu erectis.

Quam arcte atque intrinsece, historia sanctitatis Ecclesiae et apostolatus catholici, cum historia fastisque vitae religiosae canonicae, Spiritus Sancti iugiter vivificantis gratia, mira varietate in dies subrescens et nova magis magisque altiore atque firmiore unitate roboratae, coniuncta sit, in comperto apud omnes est. Nihil mirum, si Ecclesia, etiam in iuris provincia, agendi rationem fideliter retinens, quam providens Sapientia Dei clare innuebat, ita statum canonicum perfectionis, consulto prosequuta fuerit et ordinaverit, ut iure meritoque supra ipsum, aedificium ecclesiasticae disciplinae, tamquam supra unum ex angularibus lapidibus supraaedificare voluerit. Hinc, in primis status publicus perfectionis inter tres praecipuos ecclesiasticos status recensitus fuit, atque ex ipsa Ecclesia secundum personarum canonicarum ordinem gradumque unice petivit (c. 107). Res sane digna quae attente ponderetur: dum alii duo canonicarum personarum ordines, scilicet clericorum et laicorum, divino iure, cui ecclesiastica adiungitur institutio (cc. 107, 108, § 3), ex Ecclesia petuntur, quatenus ipsa est Societas hierarchice constituta et ordinata; haec media, inter clericos et laicos, religiosorum classis, quae utrisque clericis et laicis communis esse potest (c. 107), ex arcta peculiarique relatione ad Ecclesiae finem, sanctificationem nempe, efficaciter, rationibusque adaequatis prosequendum, tota desumitur.

Neque haec fuerunt satis. Ne professio publica ac sollemnis sanctitatis frustraretur atque in cassum cederet, Ecclesia, hunc canonicum perfectionis statum, semper maiore rigore in societatibus recognoscere tantum voluit ab ipsa erectis atque ordinatis, scilicet in Religionibus (c. 488, 1°), quarum generalis forma et ratio, post maturum lentumque examen, magisterio suo probaverat, quorum in singulis casibus institutum atque statuta non solum doctrinaliter et abstracte, semel iterumque ad trutinam revocaverat, sed facto et reapse experta erat. Haec in iure Codicis ita sunt severe et absolute definita, ut nullo in casu, ne per exceptionem quidem, ad-

mittatur canonicus status perfectionis, nisi ipsius professio in Religione emittatur ab Ecclesia approbata. Denique, canonica status perfectionis, qua status publici, disciplina, ita ab Ecclesia sapienter ordinata fuit, ut pro Religionibus clericalibus, in illis generatim, quae clericalem religiosorum vitam respiciunt, Religiones vice dioeceseos fungerentur, et adscriptio Religioni, incardinationis clericalis dioecesi locum obtineret (cc. 111, § 1; 115; 585).

Postquam Codex Pianus-Benedictinus, in Parte Secunda Lib. II Religiosis dicata, diligenter collecta, recognita, atque accurate expolita Religiosorum legislatione, statum canonicum perfectionis, sub respectu etiam publico, multipliciter confirmaverat atque inceptum opus Leonis XIII f.m. in sua immortalis Constitutione "Conditae a Christo"⁹ sapienter perficiendo, Congregationes votorum simplicium inter stricte sumptas Religiones admiserat, nihil in disciplina status canonici perfectionis addendum esse videbatur. Ecclesia tamen, magna qua gaudet animi mentisque largitate, tractuque vere materno, brevem titulum legislationi religiosae, veluti peropportuni complementi gratia, adiungendum censuit. In ipso (tit. XVII, Lib. II), ad statum canonicum perfectionis satis plene Ecclesia aequiparare voluit Societates, de ipsa et frequenter etiam de civili societate optime meritas, quae quamvis aliquibus iuridicis sollemnitatibus ad statum perfectionis canonicum completum necessariis, ut votis publicis (cc. 488, 1° et 7°; 487), carerent, tamen in ceteris quae ad vitam perfectionis substantialia reputantur, veris Religionibus arcta similitudine et veluti necessitate coniunguntur.

His omnibus sapienter, prudenter ac peramanter ordinatis, amplissime provisum fuerat animarum multitudini, quae relicto saeculo amplecti cuperent novum statum canonicum stricte dictum, perfectioni acquirendae unice atque ex integro consecratum. Verum benignissimus Dominus, qui absque personarum acceptione,¹⁰ omnes fideles semel iterumque ad perfectionem ubique sequendam et exercendam invitavit,¹¹ mirabili Divinae suae Providentiae consilio disposuit ut etiam in saeculo, tot vitiis depravato, nostris praecipue

⁹ Const. "Conditae a Christo Ecclesiae," 8 dec. 1900: cfr. Leonis XIII Acta, vol. XX, p. 317-327.

¹⁰ 2 Par. XIX, 7; Rom. II, 11; Eph. VI, 9; Col. III, 25.

¹¹ Mt. V, 48; XIX, 12; Col. IV, 12; Jac. I, 4.

temporibus, plures floruerint ac floreant animarum selectarum copiae quae, nedum perfectionis individualis studio aestuent, sed peculiari Dei vocatione in mundo manentes, optimas novas invenire possint Consociationum formas, temporum necessitatibus apprime respondentes, in quibus vitam ducere queant adquirendae christianae perfectioni admodum consentaneam.

Spiritualium Moderatorum prudentiae ac studio ex animo commendantes singulorum nobiles perfectionis conatus in foro interno, de Associationibus nunc solliciti sumus quae coram Ecclesia in foro, uti dicitur, externo ad vitam solidae perfectionis proprios sodales quasi manu ducere satagunt atque nituntur. Non tamen de omnibus Consociationibus hic quaestio est, quae in saeculo perfectionem christianam sincero corde sectantur, sed de iis tantum, quae in interna constitutione, in hierarchica regiminis ordinatione, in plena nullisque aliis vinculis limitata deditioe quam a membris proprie dictis requirunt, in consiliorum evangelicorum professione, in ratione denique ministeria et apostolatum exercendi, propius quoad substantiam accedunt ad status canonicos perfectionis, ac speciatim ad Societates absque votis publicis (tit. XVII), quamvis non vita communi religiosa, sed aliis externis formis utantur.

Hae Consociationes, quae inde "Institutorum saecularium" nomine venient, non sine speciali Divinae Providentiae afflatu, primo elapsi saeculi dimidio condi ceperunt, ut fideliter "consilia evangelica in saeculo sequerentur et caritatis officia maiore libertate obirent, a quibus per temporum nequitiam exercendis, religiosae familiae aut paene aut omnino prohibebantur".¹² Cum antiquiora eiusmodi Instituta bonum de se specimen dederint, et operibus factisque satis semperque magis comprobarent, per severam prudentemque suorum sodalium selectionem, per accuratam satisque longam eorum formationem, per adaequatam, firmam simul et agilem vitae ordinationem, etiam in saeculo peculiari Dei vocatione favente divinaeque gratiae auxilio, obtineri certo posse satis strictam atque efficacem suipsius, non internam tantum sed externam et fere religiosam, Domino consecrationem, et instrumentum valde opportunum penetrationis et apostolatus haberi, hac multiplici de causa "istae fidelium Societates, non secus ac verae religiosae Congregationes a Sancta Sede laudatae" non semel fuerunt.¹³

¹² S. C. Episcoporum et Regularium dec. "Ecclesia Catholica," d. 11 augusti 1889; cfr. A.S.S. XXIII, 634.

¹³ S. C. Episcoporum et Regularium dec. "Ecclesia Catholica".

Ex felici horum Institutorum incremento in dies clarius apparuit quam multiplici respectu eadem in efficax Ecclesiae et animarum subsidium verti possent. Ad vitam perfectionis semper et ubique serio ducendam; ad ipsam etiam in pluribus casibus amplectendam in quibus vita religiosa canonica possibilis vel conveniens non erat; ad impensam familiarum, professionum ac civilis societatis christianam renovationem per contactum intrinsecum et quotidianum cum vita perfecte et omnino sanctificationi consecrata; ad multiformem apostolatam et ad ministeria exercenda locis, temporibus et rerum adiunctis sacerdotibus religiosisque vetitis, vel imperviis, haec Instituta adhiberi et converti facile possunt. Ex adverso, experientia comprobatum est difficultates ac pericula non defuisse, quae haec perfectionis vita libere ducta, absque externo religiosae vestis subsidio communisque conviventiae auxilio, absque vigilantia Ordinariorum, a quibus reipsa facile ignorari poterat, Superiorumque, qui non raro longe aberant, interdum, immo et faciliter secum ferebat. Disputari etiam coeptum fuit de natura iuridica horum Institutorum, et de Sanctae Sedis mente in illis approbandis. Heic opportunum ducimus mentionem facere illius Decreti "Ecclesia Catholica", quod Sacra Congregatio Episcoporum et Regularium edidit, et die XI mensis augusti a. MDCCCLXXXIX a Decessore Nostro im. mem. Leone XIII confirmatum fuit.¹⁴ In ipso non vetabatur horum Institutorum laudatio et approbatio, edicebatur tamen Sacram Congregationem, quando haec Instituta laudabat vel approbabat, ea voluisse laudare et approbare, "non quidem ut Religiones votorum solemnium, aut veras religiosas Congregationes votorum simplicium, sed tantum ut pias sodalitates, in quibus, praeter alia, quae iuxta hodiernam Ecclesiae disciplinam desiderantur, religiosa professio proprie dicta non emittitur, sed vota, si quae fiant, privata censentur, non publica, quae nomine Ecclesiae a legitimo Superiore acceptantur". Haec insuper sodalitia—ita addebat Sacra eadem Congregatio—, sub hac essentiali conditione laudantur vel approbantur, quod plene perfecteque Ordinariis innotescant cuiusque suis, ac eorum omnino subsint iurisdictioni. Haec Sacrae Congregationis Episcoporum ac Regularium praescripta ac declarationes, ad effingendam naturam horum Institutorum opportune contulerunt, eorumque evolutionem atque progressum ordinaverunt, quin tamen impedirent.

¹⁴ Cfr. A.S.S. XXIII, 634

Nostro hoc saeculo Instituta saecularia multiplicata silenter sunt, pluresque, satis inter se diversas formas, sive autonomas sive diversimode Religionibus Societatibusve unitas, induerunt. De ipsis nihil cavet Apostolica Constitutio "Conditae a Christo", quae tantum de Congregationibus religiosis fuit sollicita. Codex etiam Iuris Canonici consulto de his Institutis siluit, et quae pro ipsis essent constituenda, cum adhuc matura non viderentur, reliquit futurae legislationi.

Haec omnia Nobiscum, pro conscientiae Nostrae officio, et pro paterna illa dilectione qua erga animas ferimur, quae in saeculo tam generose sanctitatem sectantur, semel iterumque considerantes; itemque eo consilio ducti, ut sapiens nempe ac severa fieri valeat Societatum discriminatio, illaque tantum ut vera Instituta agnoscantur, quae plenam perfectionis vitam authentice profiteantur; ut pericula vitentur erectionis novorum semper Institutorum—quae non raro imprudenter atque inconsulto conduntur—; ut illa autem Instituta, quae approbationem mereantur, talem obtineat peculiarem iuridicam ordinationem, quae eorum naturae, finibus, adiunctis apte pleneque respondeant, id ipsum pro Institutis saecularibus perficere cogitavimus ac decrevimus, quod im. mem. Decessor Noster Leo XIII pro Congregationibus votorum simplicium per Apostolicam Constitutionem "Conditae a Christo"¹⁵ tam prudenter atque sapienter praestitit. Igitur statutum generale Institutorum saecularium, quod a Suprema Sacra Congregatione Sancti Officii ad competentiam suam quod spectat, examinatum diligenter fuerat et a Sacra Congregatione de Religiosis accurate, iussu ductuque Nostro, ordinatum ac expolitum fuit, per praesentes has Litteras approbamus; atque ea omnia, quae sequuntur, Apostolica auctoritate Nostra declaramus, decernimus ac constituimus.

Hisce autem ut supra constitutis, ad ea omnia executioni mandanda Sacram Congregationem de Religiosis deputamus, cum omnibus facultatibus necessariis atque opportunis.

LEX PECULIARIS INSTITUTORUM SAECULARIUM

Art. I.

Societates, clericales vel laicales, quarum membra, christianae perfectionis adquirendae atque apostolatum plene exercendi causa,

¹⁵ Cfr. Leonis XIII Acta, vol. XX, pp. 317-327.

in saeculo consilia evangelica profitentur, ut ab aliis fidelium communibus Associationibus (Pars Tertia, Lib. II, C.I.C.) apte distinguantur, Institutorum seu Institutorum saecularium proprio nomine veniunt, atque huius Constitutionis Apostolicae normis subiiciuntur.

Art. II.

§ 1. Instituta saecularia, cum nec tria publica religionis vota (cc. 1308, § 1 et 488, 1°) admittant, nec communem vitam seu commorationem sub eodem tecto omnibus suis membris, ad normam canonum, imponant (cc. 487 sqq. et 673 sqq.):

1°—Iure, ex regula, nec sunt nec proprie loquendo dici queunt Religiones (cc. 487 et 488, 1°) vel Societates vitae communis (c. 673, § 1).

2°—Religionum aut Societatum vitae communis proprio peculiari-que iure non obligantur, neque ipso uti possunt, nisi quatenus aliquod huius iuris praescriptum, illius praecipue quo Societates absque votis publicis utuntur, legitime ipsis, per exceptionem, accomodatum fuerit atque applicatum.

§ 2. Instituta, salvis communibus iuris canonici normis quae ipsa respiciant, tamquam proprio iure, peculiari eorum naturae et conditioni arctius respondententi, his praescriptis reguntur:

1°—Generalibus huius Constitutionis Apostolicae normis, quae omnium Institutorum saecularium veluti proprium statutum constituunt.

2°—Normis quas Sacra Congregatio de Religiosis, prout necessitas ferat atque experientia suffragetur, sive Constitutionem Apostolicam interpretando sive ipsam perficiendo atque applicando, pro omnibus vel pro aliquibus ex his Institutis edere censuerit.

3°—Particularibus Constitutionibus, ad normam Articulorum qui sequuntur (Art. V-VIII), approbatis, quae generales iuris atque peculiare supra descriptas normas (nn. 1° et 2°), singulorum Institutorum finibus, necessitatibus, adiunctis, non parum inter se diversis, prudenter accomodent.

Art. III.

§ 1. Ut aliqua pia fidelium Consociatio, ad normam Articulorum qui sequuntur, erectionem in Institutum saeculare consequi valeat, haec (§§ 2-4), praeter alia communia, habeat necesse est requisita:

§ 2. Quoad vitae consecrationem et christianae perfectionis professionem.

Sodales, qui ut membra strictiore sensu sumpta, Institutis adscribi cupiunt, praeter illa pietatis et abnegationis exercitia, quibus omnes, qui ad perfectionem vitae christianae adspirant, incumbant necesse est, ad ipsam peculiaribus etiam rationibus, quae hic recensentur efficaciter tendere debent:

1°—Professione nempe coram Deo facta coelibatus et castitatis perfectae, quae voto, iuramento, consecratione in conscientia obliganti, ad normam Constitutionum, firmetur.

2°—Obedientiae voto vel promissione, ita ut stabili vinculo ligati totos Deo et caritatis seu apostolatus operibus se dedificent, et in omnibus sub manu et ductu semper moraliter sint Superiorum, ad normam Constitutionum.

3°—Paupertatis voto vel promissione, vi cuius bonorum temporalium usum non liberum habeant, sed definitum ac limitatum, ad normam Constitutionum.

§ 3. Quoad incorporationem Sodalium Instituto proprio et quoad vinculum ex ipsa ortum.

Vinculum quo Institutum saeculare et ipsius membra, proprie dicta, inter se coniungi oportet, debet esse:

1°—Stabile, ad normam Constitutionum, sive perpetuum sive temporarium, elapso tempore renovandum (c. 488, 1°).

2°—Mutuum ac plenum, ita ut, ad normam Constitutionum, Sodalibus se totum Instituto tradat, et Institutum de Sodali curam gerat atque respondeat.

§ 4. Quoad communes Institutorum saecularium sedes ac domos.

Instituta saecularia, etsi communem vitam seu commorationem sub eodem tecto cunctis suis membris ad normam iuris non imponant (Art. II, § 1), tamen pro necessitate, vel utilitate unam vel plures communes domos habere oportet, in quibus:

1°—Residere valeant qui Instituti regimen, supremum praecipue vel regionale, exercent.

2°—Commorari vel ad quas convenire queant Sodales, ad institutionem accipiendam et complendam, ad exercitia spiritualia peragenda et ad alia huiusmodi.

3°—Recipi possint Sodales, qui ob infirmam valetudinem, vel ob alia rerum adiuncta sibi providere non valeant, vel quibus non expediat, ut apud se vel apud alios ipsi privatim remaneant.

Art. IV

§ 1. Instituta saecularia (Art. I) a Sacra Congregatione de Religiosis dependent, salvis iuribus Sacrae Congregationis de Propaganda Fide, ad normam can. 252, § 3, quoad Societates et Seminaria Missionibus destinata.

§ 2. Consociationes, quae rationem non habent seu plene finem non profitentur in Art. I descripta, illaeque etiam, quae aliquo ex elementis carent in Art. I et III huius Constitutionis Apostolicae recensitis, iure reguntur Associationum fidelium, de quibus in cc. 684 sqq. et a Sacra Congregatione Concilii dependent, salva praescripto can. 252, § 3, quoad territoria Missionum.

Art. V.

§ 1. Instituta saecularia Episcopi, non autem Vicarii Capitulares vel Generales condere et in personam moralem, ad normam can. 100, par. 1 et 2, erigere possunt.

§ 2. Ea tamen Instituta Episcopi ne condant neque condi sinant, inconsulta Sacra Congregatione de Religiosis, ad normam can. 492, § 1 et Art., quī sequuntur.

Art. VI.

§ 1. Ut Episcopis, de erectione Institutorum ad normam Art. V, § 2 in antecessum consulentibus, Sacra Congregatio de Religiosis licentiam concedat eadem erigendi, de iis, congrua congruis ipsius iudicio referendo, edoceri debet, quae pro erectione Congregationum Societatumve vitae communis iuris dioecesani in Normis ab eadem Sacra Congregatione impertitis definiuntur (nn. 3-5), atque de aliis quae ex stilo et praxi eiusdem Sacrae Congregationis inducta sunt, vel in posterum inducentur.

§ 2. Obtenta ab Episcopis Sacrae Congregationis de Religiosis licentia, nihil obstat quominus, ipsi iure proprio uti libere possint et erectionem peragere. De erectione peracta officiale nuntium eidem Sacrae Congregationi Episcopi mittere ne omittant.

Art. VII.

§ 1. Instituta saecularia, quae approbationem vel laudis decretum a Sancta Sede consequuta fuerint, iuris pontificii efficiuntur (cc. 488, 3°; 673, § 2).

§ 2. Ut Instituta saecularia iuris dioecesani laudis vel approbationis decretum consequi valeant, illa generatim, congrua congruis Sacrae Congregationis de Religiosis iudicio referendo, requiruntur, quae ex Normis (nn. 6 sqq.) et ex eiusdem Sacrae Congregationis stilo ac praxi, pro Congregationibus et Societatibus vitae communis praescripta et definita sunt, vel in posterum definientur.

§ 3. Ad horum Institutorum Constitutionum primam, ulteriorem, si casus ferat, ac definitivam approbationem ita procedatur:

1°—Causae, de more paratae et unius saltem Consultoris voto ac dissertatione illustratae, in Consultorum Commissione, sub ductu Exc.mi eiusdem Sacrae Congregationis Secretarii aliusve ipsius vices gerentis, prima fiet disceptatio.

2°—Inde res tota, praeside Em.mo Sacrae Congregationis Cardinali Praefecto, atque invitatis ad causam diligentius excutiendam, prout necessitas seu utilitas suggerat, peritis seu peritioribus Consultoribus, pleni Sacrae Congregationis Congressus examini ac decisioni subiiciatur.

3°—Congressus resolutio ab Em.mo Cardinali Praefecto vel ab Exc.mo Secretario, in Audientia Ss.mo Domino referenda Ipsiusque Supremo iudicio submittenda erit.

Art. VIII

Instituta saecularia, praeterquam propriis, si quae adsint vel in posterum ferentur legibus, ad normam iuris pro non exemptis Congregationibus et Societatibus vitae communis vigentis, Ordinariis locorum subiecta sunt.

Art. IX.

Regimen internum Institutorum saecularium hierarchice ad instar regiminis Religionum et Societatum vitae communis, congrua congruis eiusdem Sacrae Congregationis iudicio referendo, pro ipsorum Institutorum natura, finibus, et adiunctis ordinari potest.

Art. X

Quoad iura et obligationes Institutorum, quae condita iam sunt et ab Episcopis, consulta Sancta Sede, vel ab ipsa Sancta Sede fuerunt approbata, hac Constitutione Apostolica nihil immutatur.

Haec edicimus, declaramus ac sancimus, decernentes pariter Apostolicam hanc Constitutionem firmam, validam et efficacem

semper esse ac fore, suosque plenos et integros effectus sortiri atque obtinere, contrariis quibusbet non obstantibus, peculiarissima etiam mentione dignis. Nulli igitur hominum liceat hanc Constitutionem a Nobis promulgatam infringere, vel eidem temerario ausu contraire.

Datum Romae, apud Sanctum Petrum, die II februarii, Purificationi Beatae Virginis Mariae sacra, anno MDCCCXXXVII, Pontificatus Nostri octavo.

PIUS PP. XII

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LETTER OF THE MOST REVEREND APOSTOLIC DELEGATE

YOUR EXCELLENCY:

In connection with the faculties announced in my letters of May 17 and July 26, 1946, I am pleased to inform Your Excellency that His Holiness has graciously acceded to the petitions of the Most Reverend Ordinaries of the United States and extended the faculty of dispensing from the Eucharistic fast those who are hospitalized. By this extension the Most Reverend Ordinaries can now dispense for the reception of holy Communion, according to the terms of that faculty, priests confined by illness to their rectory or to a religious or private house.

The Holy Father, likewise, extended in favor of religious brothers who act as nurses or infirmarians the other faculty conceded to the Most Reverend Ordinaries in favor of nursing Sisters. In virtue of the extension these religious brothers may be granted an indult to receive holy Communion, even daily, if they are fasting for four hours from solid food and for one hour from liquids and if they have spent the preceding night in the continuous service of the sick.

The foregoing grants will remain in force until the expiration of the original concessions.

The relative tax due from each diocese to the Sacred Congregation for these grants is five dollars, which may be made payable to this office, whence it will be duly reported to the Sacred Congregation in your name.

I am also pleased to inform Your Excellency that the Sacred Congregation for Religious has granted faculties to this Apostolic Delegation:

(a) to permit the contraction of loans, sales and alienations of the property belonging to a religious institute, when the sum involved does not exceed a half a million gold dollars, provided that there is observance of the norms which were made known to the Most Reverend Ordinaries and to the religious Superiors by this Apostolic Delegation on November 13, 1936;

(b) to dispense religious for the reception of holy Communion from the obligation of the Eucharistic fast so that they may take something 'per modum potus aut medicinae', when their physician considers the keeping of the fast injurious to their health;

(c) to shorten or prolong the postulancy prescribed by the Code of the Canon Law.

Will Your Excellency kindly call these faculties to the attention of the religious Superiors of your diocese in the manner you deem opportune.

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The *Opus Dei* Society in Madrid, founded in 1928, is the first secular institute to receive official recognition under the provisions of the Constitution, "*Provida Mater Ecclesia*".

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Our Holy Father issued an Encyclical Letter, "*Fulgens radiatur*", commemorating the fourteenth centenary of the death of St. Benedict and expressing the hope that the generosity of the faithful would permit the early restoration of Monte Cassino Abbey.

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The Holy Office has again stated that the banners of a political party cannot be blessed, referring to a similar ruling of August 31, 1887.

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Decrees of the Sacred Congregation of Rites have affirmed the practice of the virtues in a heroic degree on the part of Venerable Ludovico Pavoni, founder of the Congregation of the Sons of Mary Immaculate and, in the case of Venerable Brother Benilde of the Christian Brothers, the wisdom of proceeding to his beatification.

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Eighteen members of the hierarchy in the Philippine Islands have set up a Catholic Welfare Organization of the Philippines to co-ordinate the activities of the hierarchy there.

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SECULAR

ACTION FOR SEPARATION IN NEW YORK

AN ACT to amend the civil practice act, in relation to action for a separation

Became a law April 10, 1947, with the approval of the Governor.
Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section eleven hundred sixty-one of the civil practice act, as amended by chapter one hundred sixty-two of the laws of nineteen hundred thirty-eight, is hereby amended to read as follows:

§ 1161. Action for separation; when maintainable. An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever, or for a limited time, for any of the following causes:

1. The cruel and inhuman treatment of the plaintiff by the defendant.

2. Such conduct on the part of the defendant towards the plaintiff as may render it unsafe and improper for the latter to cohabit with the former.

3. The abandonment of the plaintiff by the defendant.

4. Where the wife is plaintiff, the neglect or refusal of the defendant to provide for her.

5. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce.

§ 2. This act shall take effect immediately.

The Supreme Court of the United States denied petitions for the rehearing of its recent decision in the New Jersey bus transportation case, in which it upheld the constitutionality of a New Jersey statute authorizing the transportation of parochial and private school children at public expense.

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The United States Supreme Court has docketed for review the case involving religion classes held in Champaign, Illinois. These classes have been offered during the past six years in the public schools under the joint sponsorship of Catholics, Jews and Protestants. These groups furnish teachers who give a half hour instruction weekly to children whose parents have signed consent cards. Children are released from other classes during the period of instruction and the instruction is given in the public school buildings. This practice has been held not unconstitutional by the Champaign County Circuit Court and by the Illinois Supreme Court.

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A constitutional amendment introduced by Representative Joseph R. Bryson would prohibit Congress and the States from granting public aid to any educational institution wholly or in part under sectarian control.

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The New York Assembly and Senate have passed a bill authorizing boards of education to provide health and medical welfare services to private and parochial schools. It also permits the absence of public school pupils for religious observances and religious instruction.

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The Pennsylvania Supreme Court has denied Catholic school pupils the right to ride in public school busses, thus upholding the decision of the Court of Common Pleas of Chester County. The decision was not based on the provisions of the Pennsylvania Constitution but on the School Code. It was said that the latter contains neither express nor implied provisions requiring public school directors to furnish transportation to any but those attending public schools. The counsel for the parochial school children had argued

that the Code requires that transportation be furnished all children to the nearest public school and that this was mandatory even if the children after leaving the bus should walk the rest of the way to the parochial school.

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The Maine Senate (18-13) defeated a bill, already passed in the House (106-1), that would have permitted school committees to provide transportation to private and parochial school pupils on regular school busses and over established routes of these busses.

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The Supreme Court of California has affirmed the decision of the California District Court of Appeals, Second Appellate District, upholding the constitutionality of a statute providing for a system of released time for public school children for the purpose of receiving religious instruction.

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The Wisconsin Senate (19-11) defeated a bill requiring local school boards to release public school pupils up to three hours a week for the purpose of receiving religious instruction off the school premises.

The Wisconsin Senate also defeated a bill passed by the House and sponsored by the League of Wisconsin Municipalities. The bill proposed to make available for local property taxation such portions of church property and other tax-exempt property as brought in profit.

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A bill to prevent Sisters from teaching in the public schools of North Dakota was withdrawn by the Representative who introduced it. The Sisters teach in seventeen schools, in ten of which all the children are Catholics.

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The Connecticut Senate has defeated by a voice vote the House Bill which would have allowed the dissemination of information on contraception.

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The Constituent Assembly of Venezuela has adopted a preamble for the new Constitution which will invoke the guidance of God for the nation.

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The new Constitution of Ecuador states that in the future the rights of parents, or of those who represent them, to give their children the education they desire, shall be respected by the State. In addition, private schools in which no tuition fees are charged will be subsidized by the State or by municipalities.

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In Guatemala, the Catholic weekly *Verbum* is continuing its struggle for an amendment of the law prohibiting any newspaper or radio station belonging to a religious group or to ministers of religion from issuing statements on political or labor issues.

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The Constitution adopted by the Constituent Assembly of India declares that all persons are equally entitled to freedom of conscience and to the right freely to practise and propagate religious belief, subject to the requirements of public order, morality or health. It guarantees to every religious group the right to manage its own affairs in matters of religion and, subject to law, to acquire and administer property for charitable and religious purposes.

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The Constituent Assembly of Italy has approved the inclusion of the 1929 Lateran Treaty in the new Italian Constitution. Under this pact legislation is forbidden legalizing divorce and Church rulings concerning marriage are given recognition.

The Constituent Assembly of Italy (244-204) has defeated a proposal to grant State aid to denominational schools. Religious instruction may be given in the public schools if the parents wish it but no credits are available for such courses.

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Chronicle

GENERAL

John Victor Thomas Woolrych Tait Perowne has been named by the British Government to succeed Sir Francis D'Arcy Osborne as British Envoy Extraordinary at the Holy See.

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Uruguay's new Minister to the Holy See is Alfredo Carbonell Debali.

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The Vicariate of Guam has been made a part of the Province of San Francisco.

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Forty thousand persons from many countries, including five hundred lawyers, were present at Treguier, Brittany, to celebrate the sixth centenary of the canonization of St. Ives.

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On May 7, the Most Reverend Apostolic Delegate offered a Pontifical Mass in the Cathedral in Wheeling, commemorating the twenty-fifth anniversary of the consecration of Most Rev. John J. Swint, D.D., Bishop of that See.

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On May 13, Most Rev. Edmund F. Gibbons, D.D., Bishop of Albany, celebrated a Pontifical Mass in the Cathedral of the Immaculate Conception, commemorating the twenty-fifth anniversary of his consecration. Most Rev. William A. Scully, D.D., his Coadjutor, preached the sermon. Present were His Eminence, Francis Cardinal Spellman, and Governor Thomas E. Dewey.

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Rt. Rev. Boniface Seng, O.S.B., D.D., Abbot of St. Bernard's Abbey, Mobile, has celebrated the golden jubilee of his ordination.

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The centenary commemoration in the Diocese of Galveston, scheduled for April 30, was canceled because of the Texas City disaster.

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The ninth annual Pontifical Memorial Military Field Mass was celebrated in Arlington National Cemetery by the Most Reverend Apostolic Delegate on May 25, under the auspices of the Washington General Assembly of the Fourth Degree, Knights of Columbus.

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The forty-fourth annual meeting of the National Catholic Educational Association, held in Boston, April 8-10, was opened with a Pontifical Mass

in the Cathedral of the Holy Cross at which the sermon was delivered by Most Rev. John T. McNicholas, O.P., S.T.M., Archbishop of Cincinnati. On April 9, the seminar group was addressed by Most Rev. Richard J. Cushing, D.D., Archbishop of Boston.

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May 21-23 the annual convention of the National Catholic Press Association was held in St. Paul.

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May 19-21 the National Conference on Catholic Youth Work was held in Cleveland.

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April 18-20 the Annual Congress of the National Federation of Catholic College Students was held in Toledo.

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April 6-8 the nineteenth annual conference of the Catholic Association for International Peace was held in Boston. It was opened with an address by Most Rev. Richard J. Cushing, D.D.

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On May 25 Most Rev. John J. Mitty, D.D., Archbishop of San Francisco, celebrated a Pontifical Mass commemorating the centenary of the coming of the Salesian Fathers to the United States.

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April 23-24 the Brothers of the Sacred Heart celebrated the centenary of their foundation in Mobile.

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The Sisters of St. Joseph celebrated the centenary of their coming to Philadelphia.

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May 22, the Most Rev. Apostolic Delegate celebrated the Pontifical Mass of Requiem at the funeral of Most Rev. Michael J. Curley, D.D., late Archbishop of Baltimore and Washington, who died May 16 at the age of 67. The sermon was preached by Most Rev. John M. McNamara, D.D., now Administrator of the Archdiocese.

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March 22, Most Rev. Thomas J. Walsh, D.D., Archbishop of Newark, celebrated the Pontifical Mass of Requiem at the funeral of Most Rev. Thomas H. McLaughlin, D.D., late Bishop of Paterson. Both houses of the New Jersey Legislature passed resolutions of regret at the prelate's death.

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Bishop Joseph M. Birraux, 64 years old, Superior General of the White Fathers since 1936, died at Angiers.

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Msgr. Carlo Respighi, 74, Papal Master of Ceremonies for fifty years, died on June 6.

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DIGNITIES

Most Rev. Maurilio Silvani has been appointed Papal Internuncio to Austria.

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On June 18, His Eminence, Francis Cardinal Spellman received the degree LL.D. from Loyola University, Chicago.

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Most Rev. Antonio Taffi, D.D., has been made Titular Archbishop of Sergiopolis and Papal Nuncio to Cuba.

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His Eminence, James Cardinal McGuigan, was named Papal Legate at the Marian Congress held in Ottawa, June 18-22.

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On April 27, His Eminence, Eugene Cardinal Tisserant, received the degree LL.D. from Fordham University.

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On May 8, His Eminence, Francis Cardinal Spellman, installed as Co-adjutor of the Diocese of Rapid City, Most Rev. William T. McCarty, D.D., formerly Military Delegate of the Armed Forces.

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On May 31, Most Rev. John F. O'Hara, C.S.C., D.D., Bishop of Buffalo, received the degree LL.D. from Niagara University.

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His Eminence, Edward Cardinal Mooney, consecrated in Blessed Sacrament Cathedral Most Rev. Allen James Babcock, D.D., named Titular Bishop of Irenopolis and Auxiliary of the Archdiocese of Detroit. The co-consecrators were Most Rev. William F. Murphy, D.D., Bishop of Saginaw, and Most Rev. Stephen S. Woznicki, D.D., Auxiliary of Detroit. The sermon was preached by Most Rev. Ralph L. Hayes, D.D., Bishop of Davenport.

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On May 1, Most Rev. Floyd L. Begin, S.T.D., Ph.D., J.C.D., Titular Bishop of Sala and Auxiliary of the Diocese of Cleveland, was consecrated in St. Agnes Church by Most Rev. Edward F. Hoban, D.D., Bishop of Cleveland. The co-consecrators were Most Rev. James A. McFadden, D.D., Bishop of Youngstown, and Most Rev. Joseph T. McGucken, D.D., Auxiliary Bishop of Los Angeles. The sermon was preached by Most Rev. John T. McNicholas, O.P., S.T.M., Archbishop of Cincinnati.

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On April 23, Most Rev. Mark Carroll, D.D., Bishop of Wichita, was consecrated in St. Louis Cathedral, St. Louis, by Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis. The co-consecrators were Most Rev. Paul C. Schulte, D.D., Archbishop of Indianapolis, and Most Rev. George J. Donnelly, D.D., Bishop of Leavenworth. The sermon was preached by Most Rev. Christopher E. Byrne, D.D., Bishop of Galveston.

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On April 30, Most Rev. Thomas J. McDonough, D.D., named Titular Bishop of Thaenae and Auxiliary of the Diocese of St. Augustine, was consecrated by His Eminence, Dennis Cardinal Dougherty. The co-consecrators were Most Rev. Emmet M. Walsh, D.D., Bishop of Charleston, and Most Rev. J. Carroll McCormick, D.D., Auxiliary Bishop of Philadelphia. The sermon was preached by Most Rev. Michael J. Ready, D.D., Bishop of Columbus.

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Most Rev. Leo F. Dworschak, D.D., Titular Bishop of Tium, has been named Auxiliary of the Diocese of Fargo.

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On June 30, Most Rev. John J. Wright, D.D., Titular Bishop of Tegea and Auxiliary of Boston, was consecrated by Most Rev. Richard J. Cushing, D.D., Archbishop of Boston.

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On July 2, Most Rev. John P. Cody, S.T.D., Ph.D., J.C.D., Titular Bishop of Apollonia and Auxiliary of St. Louis, will be consecrated in St. Louis Cathedral by Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis. The co-consecrators will be Most Rev. George J. Donnelly, D.D., Bishop of Leavenworth, and Most Rev. Vincent S. Waters, D.D., Bishop of Raleigh.

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On July 2, Most Rev. James J. Byrne, D.D., Titular Bishop of Etenna and Auxiliary of St. Paul, will be consecrated by the Most Rev. Apostolic Delegate. The co-consecrators will be Most Rev. Thomas A. Welch, D.D., Bishop of Duluth, and Most Rev. Francis J. Schenk, D.D., Bishop of Crookston. The sermon will be preached by Most Rev. William O. Brady, D.D., Bishop of Sioux Falls.

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On July 2, Most Rev. Henry T. Klonowski, D.D., Titular Bishop of Daldis and Auxiliary of Scranton, will be consecrated in St. Peter's Cathedral by Most Rev. William J. Hafey, D.D., Bishop of Scranton. The co-consecrators will be Most Rev. George L. Leech, D.D., Bishop of Harrisburg, and Most Rev. Stephen S. Woznicki, D.D., Auxiliary of Detroit.

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On April 23, Most Rev. Lawrence L. Graner, C.S.C., D.D., Bishop of Dacca, was consecrated in Sacred Heart Church on the campus of the University of Notre Dame by Most Rev. John F. O'Hara, C.S.C., D.D., Bishop of Buffalo. The co-consecrators were Most Rev. John M. Gannon, D.D., Bishop of Erie and Most Rev. John F. Noll, D.D., Bishop of Fort Wayne.

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Very Rev. Joseph Marling, C.P.P.S., S.T.D., Provincial of the Congregation of the Precious Blood, has been named Auxiliary Bishop of Kansas City.

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Rev. Joseph R. Lacy, of the Diocese of Hartford, has been named Bursar of the North American College.

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Msgr. Paul Emile Leger, V.G., of Valleyfield, has been named the Superior of the Canadian College, Rome.

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On May 22, Rt. Rev. Gerald Benkert, O.S.B., D.D., Ph.D., was blessed by Most Rev. John J. Boylan, D.D., Bishop of Rockford, as the first Abbot of the newly erected Marmion Abbey, Aurora, Illinois.

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On April 26, Very Rev. Joseph A. Hickey, O.S.A., was elected Prior General of the Order of St. Augustine.

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Very Rev. Edward Kilian Lynch, O.Carm., has been elected Superior General of the Carmelites.

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Very Rev. Leo Deschatelets, O.M.I., has been named Superior General of the Oblates of Mary Immaculate.

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Most Rev. Francis Emmenegger, S.D.S., has been named Superior General of the Salvatorians.

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Very Rev. Ephraim Blandeau has been re-elected Prior General of the Hospitallers of St. John of God.

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Very Rev. Thomas A. Brandon, O.S.C., has been named Vicar General of the Crosier Order in America.

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Very Rev. Robert J. Slavin, O.P., has been named President of Providence College, Providence, R. I.

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Very Rev. Henry J. Moquin, A.A., has been appointed President of Assumption College, Worcester, Massachusetts.

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The following have been named Protonotaries Apostolic: Rt. Rev. Msgrs. James F. McGloin, of the Diocese of Buffalo; John Molloy, of the Archdiocese of Dubuque; and Henry Van der Putten, of the Diocese of Alexandria.

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The following have been named Domestic Prelates: Rt. Rev. Msgrs. Francis J. Murphy, John S. Middleton, Edward M. Betowski, Joseph M. Egan, Bonaventure J. Filitti, John D. McGowan, and Thomas F. Temple, of the Archdiocese of New York; John Dunphy, Alois A. Ziskovsky, Joseph A. Corrigan, John J. Cullinan, James Zachman, and Vincent W. Worzalla, of the Archdiocese of St. Paul; John K. Ryan, of the Diocese of Winona; Edward L. Stephens and Joseph R. Govaert, of the Diocese of Richmond; Edward Albuoy, of the Diocese of Gallup; William J. Devlin, Thomas F. Collins, James B. Empey, John J. Lambe, Daniel B. Murphy, John M. Sibon, George L. Smith and John T. Smith, of the Diocese of Reno.

Very Rev. John J. Manning, J.C.D., of Pontifical College Josephinum, has been named Papal Chamberlain.

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James R. Dougherty, of the Diocese of Corpus Christi, has been named Knight Commander of the Order of St. Gregory the Great.

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John G. Kenedy, of the Diocese of Corpus Christi, and Joseph C. Dolan, of the Diocese of Gallup, have been named Knights of St. Gregory the Great.

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Mrs. Sarita Kenedy East, of the Diocese of Corpus Christi, has received the Medal *Pro Ecclesia et Pontifice*.

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William George Bruce was awarded the 1947 Laetare Medal.

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Dr. George Sperti received the Christian Culture Award of Assumption College, Windsor, Canada.

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Nicola A. Montani, K.C.S.S., received the Catholic Choir Master Liturgical Music Award for 1947 given by the Society of St. Gregory of America.

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Senator Robert F. Wagner was given the fourth annual Pope Leo XIII Award by the Sheil School of Social Studies for outstanding contribution to Christian social legislation.

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William C. Bullitt was given the degree LL.D. by Georgetown University on June 8.

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Congresswoman Mary Theresa Norton, of New Jersey, was awarded the 1947 Siena Medal for her outstanding example as a Catholic woman.

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THE CANON LAW SOCIETY OF AMERICA

A Regional Meeting of The Canon Law Society of America was held Thursday, May 8, 1947, at the Hotel Barclay, Philadelphia, Pa. Over 45 members were present.

The Rev. Bartholomew F. Fair, J.C.D., of St. Charles Seminary, Overbrook, delivered the paper on: "The duty of the Promoter of Justice in the Accusation of Marriages in Formal Procedure." Drawing on the Code, the Instruction "*Provida Mater*", and responses, both public and private, of the Holy See, Dr. Fair outlined clearly the position of the Promoter in relation to cases coming within his competency especially those wherein the parties were disqualified by law from accusing the marriage. A distinction between the "*ius accusandi*" and the "*ius standi in iudicio*" was interpreted in the light of Rota jurisprudence.

In the lively discussion which followed, Rev. Thomas J. Kelly, D.D., of Brooklyn, N. Y., Rev. James P. Kelly, J.C.D., of New York City, Rev. C.

Bernard Alford, J.C.D., of Albany, N. Y., Rev. Stephen C. Gulovich, D.D., Ph.D., of Pittsburgh, Rev. William Cavanaugh, C.P., J.C.D., of Springfield, Mass., and Rev. E. Robert Arthur, J.C.L., of Washington, D. C., were among those taking active part.

The Rev. Francis X. Wahl, J.C.D., and Rev. Joseph A. M. Quigley, J.C.D., of Philadelphia were in charge of the arrangements which included a dinner graced by the presence of the Most Rev. Hugh L. Lamb, D.D., Vicar General of the Archdiocese of Philadelphia, the Most Rev. Bartholomew J. Eustace, D.D., Bishop of Camden, N. J., and the Most Rev. J. Carroll McCormick, D.D., newly consecrated Auxiliary Bishop to His Eminence, Dennis Cardinal Dougherty of Philadelphia. Bishop Lamb spoke at the dinner welcoming the Society to Philadelphia and explaining the Pennsylvania Civil Law in respect to church corporations.

At the invitation of Bishop Eustace many members later in the evening visited the Camden Chancery where under the guidance of Msgr. Augustine Mozier they were introduced to a most efficient and complete Chancery system.

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THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

1. a. Date: April 24, 1947.

b. Title: Friedrich Karl von Savigny and Roman Law.

c. Author: Friedrich Engel-Janosi, Jur.D., Ph.D. (both from the University of Vienna), formerly lecturer at Cambridge University, Professor of Modern History at The Catholic University of America.

d. Abstract: Discussed in the light of his reputation as a scholar in Roman Law, the relation of Savigny to the age of German classicism and the growth of a love for German national culture and his importance as founder of the Historical School of German Romanticism.

2. a. Date: May 12, 1947.

b. Title: The Theory of Public Law and the State in the Thirteenth Century.

c. Author: Gaines Post, Ph.D., The University of Wisconsin, Department of History; *Magister* of The Riccobono Seminar of Roman Law in America.

d. Abstract: Developed the origin of the claims of the common welfare from the doctrine of the needs of society.

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THE CATHOLIC INSTITUTE OF PARIS

From April 23 to April 26 there was held at the Catholic Institute of Paris a series of ceremonies in celebration of the golden jubilee of the foundation of the Faculty of Canon Law by the Holy See. These ceremonies were celebrated under the presidency of Emanuel Celestine Cardinal Suhard, Archbishop of Paris, and the Papal Nuncio, Most Rev. Angelo Giuseppe Roncalli. A schedule of the papers read in the course of the celebration is presented herewith.

Chanoine E. Fournier, doyen honoraire de la Faculté de Droit Canonique.

Le rôle historique, juridique et notarial du Secrétaire d'évêché en France.

M. H. Lalou, doyen de la Faculté libre de Droit de l'I.C. de Paris.

Histoire du divorce en France.

R. P. J. Creusen s.j., professeur à l'Université grégorienne, Rome.

La réserve des censures "ab homine" dans le Code de Droit Canonique.

Chanoine H. X. Arquillière, doyen de la Faculté de Théologie de l'I. C. de Paris.

Quel est le sens juridique du drame de Canossa?

M. G. Le Bras, professeur à la Faculté de Droit de Paris, président de la Section des Sciences Religieuses à l'Ecole Pratique des Hautes Etudes.

La formation du droit romano-canonique.

Mgr. P. Bernier, ancien professeur à l'Université Laval, secrétaire de l'épiscopat canadien.

Les assemblées épiscopales dans le droit ecclésiastique contemporain.

M. J. Brèthe de la Gressaye, professeur à la Faculté de Droit de Bordeaux. Droit disciplinaire et droit canonique.

R.P. A. Caron o.m.i., doyen de la Faculté de Droit Canonique et vice-recteur de l'Université d'Ottawa.

M. A. de Bouïard, professeur à l'Ecole Nationale des Chartes.

Un effet de la canonisation du droit romain au XII^e siècle: l'instauration de la juridiction gracieuse en France coutumière.

M. F. Clerc, doyen de la Faculté de Droit de Neuchâtel.

L'autorité du droit canonique dans la jurisprudence du tribunal fédéral suisse.

M. Fr. Olivier-Martin, professeur à la Faculté de Droit de Paris, membre de l'Institut.

Quelques exemples de l'influence du droit canonique sur le droit public de l'ancienne France.

R.P. E. Jombart s.j., professeur à la Faculté de Droit Canonique de l'I. C. de Toulouse.

Tradition et progrès en droit canonique.

M. C. Corsanego, avocat consistorial, professeur à l'Institut Pontifical Utriusque Iuris, Rome.

La contribution du christianisme au progrès du droit pénal.

M. J. Dauvillier, professeur à la Faculté de Droit de Toulouse.

Le partage d'ascendant et la parabole du fils prodigue.

Abbé Aderville-Bureau, doyen de la Faculté de Droit Canonique de l'Université Laval, Québec.

Un aspect de la doctrine canonique des empêchements de mariage.

M. H. Mazeaud, professeur à la Faculté de Droit de Paris.

La lésion.

Chanoine J. Denis, professeur à la Faculté de Droit Canonique de l'I. C. de Paris.

Le Cardinal Gasparri, initiateur de l'enseignement du droit canonique à l'Institut catholique de Paris, de 1880 à 1898.

Chanoine H. Wagnon, professeur à la Faculté de Droit Canonique de l'Université de Louvain.

Nouvelles controverses en doctrine concordataire.

M. J. Gaudemet, professeur à la Faculté de Droit de Strasbourg.

Droit romain et droit canonique en occident aux IV^e et V^e siècles.

Etat du problème et principes d'enquête.

M. J. Imbert, professeur à la Faculté de Droit Canonique de l'I.C. de Paris.

Le procès de N. S. Jésus-Christ.

Abbé Ch. Lefebvre, professeur aux Facultés Catholiques de Lille.

L'équité canonique et les manifestations de volonté.

Chanoine W. Onclin, professeur à la Faculté de Droit Canonique de l'Université de Louvain.

L'organisation des pouvoirs dans l'Eglise.

M. A. Rouast, professeur à la Faculté de Droit de Paris.

Le consentement des parents au mariage.

Abbé L. Guizard, professeur à la Faculté de Droit canonique de l'I.C. de Paris.

L'oeuvre historique et canonique de Mgr. Boudinhon, professeur à l'Institut Catholique de Paris de 1884 à 1916, premier doyen de la Faculté.

M. L. Rigaud, professeur à la Faculté libre de Droit de l'I.C. de Paris.

Contribution des canonistes aux plus anciennes doctrines du droit international privé et influence de celui-ci sur le Codex Iuris Canonici.

M. S. Kuttner, professeur à la Faculté de Droit Canonique de l'Université Catholique de Washington.

Quelques observations sur l'autorité des sources canoniques dans le droit classique de l'Eglise.

Abbé J. des Graviers, professeur à la Faculté de Droit Canonique de l'I.C. de Paris.

Le professorat de Mgr. Many, prêtre de St. Sulpice, à la Faculté de Droit canonique, de 1898 à 1908.

Chanoine R. Naz, directeur du Dictionnaire de Droit Canonique.

Les Cardelles Sardes; contribution à l'histoire de la propriété ecclésiastique en Savoie et en France, 1753-1947.

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THE INSTITUTE OF CANON LAW IN MUNICH

An Institute of Canon Law has been canonically erected at the University of Munich and approved by both the Holy See and the Government of Bavaria. The new Institute will function as part of the School of Theology but with a Faculty of its own and the right to confer degrees in Canon Law. The Rev. Dr. Klaus Mörsdorf has been appointed Director of the Institute; in conjunction with the Rev. Canon Dr. Dominicus Lindner he will teach Public Law and the first three books of the Code. Further members of the Faculty are: Rev. Dr. Erwin von Kienitz (Church and State), Rev. Dr. A. Scheuermann, O.F.M. (Law of Missions and Religious), Rev. Dr. Peter J. Kessler (History of Canon Law).

On behalf of the School of Canon Law of The Catholic University of America, THE JURIST expresses the fervent wish that the new Institute may give impetus to the study of Canon Law in Germany and successfully educate new generations for the service of the Church in the ecclesiastical courts and diocesan administration.

